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Correspondence regarding the Proposed Amendment of the Law of Landlord and tenant in Bengal

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CORRESPONDENCE

REGARDING

THE PROPOSED AMENDMENT OF THE LAW OF LANDLORD AND TENANT IN BENGAL.

No. 6, dated Fort William, the 21st March 1882.

From—The Government of India,

To—Her Majesty's Secretary of State for India.

Introductory.

YOUR Lordship is aware that the question of a revised Rent Law for Bengal has been, for some time past, under consideration. The Report of the Rent Law Commission, appointed by the Lieutenant-Governor of Bengal, was submitted to us in July 1880, and was transmitted to England not long after its receipt. We explained[1] that we were not in a position to express our views upon it until the opinions invited by the Local Government had been collected; and we intimated that there would be no attempt to legislate on the subject until our recommendations had been laid before, and considered by, Your Lordship.

[1] Despatch No. 1 (Revenue), dated the 8th December 1880.

The report of the Bengal Government.

2. We now have the honour to forward a Report, in two volumes, furnished by the Government of Bengal, which deals with the proposed amendment of the Law of Landlord and Tenant in that Province. It will be perceived that, in all, three Bills for the consolidation and revision of the Rent Law throughout Bengal, have been prepared at different times by different authorities. The first draft was that which was included in the above-mentioned Report of the Rent Law Commission; the second draft, after portions had been circulated for the opinion of selected officials, was completed in May 1881 by Mr. Reynolds, an officer who was placed on special duty for some months to assist the Lieutenant-Governor in his deliberations: the third draft is that which has been finally settled by Sir Ashley Eden. Our remarks will be mainly directed to this third draft; and it is to it that we shall refer wherever, in the course of this despatch, we speak of "the Bill" without further specification.

Scope of this despatch.

3. At the outset we would explain that there are many questions of much consequence, necessarily raised by the present undertaking, which we shall exclude from notice on this occasion, because they must engage the attention of the Legislative Council which has to effect the amendment of the law. The whole project has not yet advanced to that stage in which the Bill might be passed immediately. On its introduction in any Council, very numerous points, both of substance and expression, will be found to require close examination by lawyers and other experts. It is not our object now to forestall the business of the legislature, but to obtain Your Lordship's instructions in regard to the general

The marginal citations in the text relate to the four Volumes, containing the Bengal Rent Papers, numbered serially in order of date; thus—

No. I is Volume I of the Report of the Rent Law Commission.

No. II is Volume II of the same Report.

(The edition quoted is the second edition, printed at the Office of the Superintendent of Government Printing, Calcutta, 1881.)

No. III is Volume II of the Report of the Bengal Government, containing opinions and memorials.

No. IV is Volume I of the same Report, comprising Sir Ashley Eden's Bill and other papers.

principles upon which legislation shall proceed. We shall therefore avoid the discussion of all matters connected with the Bill which are not of primary importance for that purpose; but we shall preface the statement of our conclusions and of the chief grounds for them, by a review of the recent history of the subject.

General objections to legislation.

4. This we are led to do partly because the nature of the evils which we desire to correct will best be exposed by reference to actual occurrences; and partly because the necessity for any general revision of the Bengal Rent Law has been questioned in some quarters since the Report of the Rent Law Commission was published about a year and a half ago. The zamindars, both of Behar and Bengal, urge that the movement which has resulted in the proposed Bill, originated when new responsibilities were imposed upon the landholders in connection with the Road and Public Works cesses, and was due to the admission that, on this account, further facilities should be afforded to the landholders in the collection of their rents. The Behar zamindars allege (though the allegation is not undisputed) that they never complained of difficulties in collecting and enhancing their rents. They characterise the assertions that the Behar peasantry are in a poor and depressed condition, and that this condition is due to some defect in the land system, as groundless assumptions; and they pronounce legislative interference to be absolutely unnecessary. The zamindars who attended the Conference of the British Indian Association in February and March 1881 unanimously deprecated any large change in the substantive Rent Law.

Objections met from the history of the subject.

IV. pp. 129 ff.

5. The issue thus raised has been very conclusively met by the Lieutenant-Governor, and the particulars recited in the *Memorandum on the History of the Rent Question in Bengal* (annexed to the letter of the Bengal Government No. 849 T., dated the 21st July 1881), suffice to show that for the last nine or ten years a general revision of the substantive portions of the Rent Law has been regarded as, at some time, inevitable, and has been advocated by none more eagerly than by the zamindars themselves. Act X of 1859 received the Governor General's assent on the 29th April of that year. Before the end of 1863 its amendment had been suggested by Sir Barnes Peacock, the Chief Justice of Bengal, and by the Revenue authorities of the North-Western Provinces. Of late years successive Lieutenant-Governors have borne witness to the existence of chronic evils which nothing short of comprehensive legislation could cure. In 1873 Sir George Campbell had no doubt that the Government would eventually be compelled to deal with the whole question of the relations of landlords and ryots in Bengal. In 1876 Sir Richard Temple proposed to introduce a Bill to define the principles upon which the rents of occupancy ryots and tenure-holders should be fixed, to simplify the procedure for realising arrears of rent in undisputed cases, to extend the definition of "occupancy ryot," and to render the right and interest of a ryot of that class liable to sale for default in paying rent, and transferable by private agreement. The Government of India intimated its assent to the preparation of such a measure, but invited further discussion as to the transferability of the occupancy right, on which point doubts were entertained. Sir Ashley Eden, in framing a Bill designed to remove the real causes of dispute amongst the agricultural classes, has merely undertaken a duty which his predecessors acknowledged, which Sir Richard Temple attempted, and which must, sooner or later, have been fulfilled.

Proceedings from 1863 to 1870.

IV. pp. 132-4.

6. The discussion of 1863 arose in Bengal out of the decision of the High Court in the celebrated case of *Hills* versus *Ishwar Ghose*—a decision unfavourable to the rights of the cultivators, and treating the question of Indian land-rent on theoretic principles held by revenue officers to be inapplicable to the subject. It is mentioned in the *Historical Memorandum* that it is not possible from the papers in the Bengal Secretariat to trace all the steps in the correspondence which ensued. Our records, however, show that a Bill for the amendment of Act X of 1859 was drawn up by Sir W. Muir and circulated for opinion in August 1865 to the Governments of Bengal, the North-Western Provinces, and the Punjab, and to the Chief Commissioners of the Central Provinces and Oudh. Provision was made in respect to the occupancy right and enhancement. It

was intended to extend the new law to the Regulation Districts of Bengal and the North-Western Provinces, and it was supposed that it would probably also prove suitable for the Central Provinces and the Punjab. Sir Cecil Beadon, the Lieutenant-Governor of Bengal, when replying to the circular of 1865, did not, indeed, deny that Act X of 1859 might, on its introduction, have worked injustice with reference to rights of occupancy, but he nevertheless very strongly deprecated fresh legislation. In 1867 he again represented that any change in the principles of Act X would then produce undesirable results. And finally, when in 1869 it was determined to transfer the trial of rent suits from the Revenue to the ordinary Courts, the Government of Sir William Grey, notwithstanding the solicitations of the landlords, firmly refused to alter the substantive rent law.

The same continued.

7. The opponents of the present measure are entitled to the full benefit of these facts. The first difficulties in Bengal arose out of the working of the law of enhancement; and doubtless much was hoped from the judgment in the great rent case of *Thakuráni Dasi* delivered in 1865, which was meant to provide an equitable rule for governing increase of rent and to restore the ryot to the beneficial position whence he had been ousted in 1863. About this time, too, circumstances may have suggested to some a belief that the Government, having afforded insufficient protection to the ryots from the period of the Permanent Settlement, had, in 1859, proceeded to too great a length in their support. For ourselves (looking only to the subject immediately before us) we entirely disavow any belief of this nature. On the contrary, we hold that in the Lower Provinces further steps should now be taken in the direction of securing the tenants' interests. But it is important not to ignore the oscillation of general opinion which occurred fifteen or sixteen years ago. Many events had tended to lower the claims of tenants in official estimation and to help the cause of the large landlords. (Before the mutiny ideas on the subject of property and tenant-right in India took very much of their colour from the views of the able peasant-proprietary school of the North-Western Provinces. But the occurrences of 1857 drew attention in some places to the leaderless condition of the people; the sympathies between the mass of the agricultural population and their rulers were for some years disturbed by reminiscences of disorder and severity; the development of the country gave rise to hopes of European colonisation; and thus theories of land-tenure, which were unfavourable to tenant-right as being an impediment to the free disposal of property, were advocated, in Lower Bengal, on behalf of great European interests, and, elsewhere, as coincident with political expediency. The relation between landlord and tenant began to be regarded purely as one of contract. Sir Barnes Peacock objected to section 6 of Act X of 1859 because, in his opinion, it interfered with the just rights of the zamindars, at least in the permanently-settled districts, by vesting rights of occupancy in the ryots which, as he thought, had no previous existence. The Statement of Objects and Reasons, annexed to the Bill of 1865, expressly asserted that, however suitable the occupancy section of Act X of 1859 might be to Bengal, its provisions were, in the North-Western Provinces, over-stringent and unreasonably adverse to the proprietor.

Minute, dated the 31st March 1864.

Difficulties of different classes have arisen in different parts.

8. From 1870 onwards a distinction is observable in the reports from the three Provinces of Orissa, Bengal Proper, and Behar, respectively. The difficulties which the legislature has now to encounter have assumed different shapes in different places; in the east there have been combinations of ryots refusing to pay rent; from the west and south we have indisputable evidence of oppressive conduct on the part of the zemindars. Amongst the causes in general operation throughout the Lower Provinces, which enable either party, when it is the stronger one, to nullify the just rights of the other, we would place, first, the failure, in some very material points, of a law intended to protect the cultivators, and to secure the zamindars in the enjoyment of fair and equitable rents; and secondly, the circumstance that the legislation of 1859 was not followed by executive proceedings for the formation and proper maintenance of a record of the rights of the several classes interested in the land. Neither Act X of 1859, nor, in our opinion, any other

Main causes of them.

legislation can, merely by its own force, completely prevent aggression. From such causes it has happened that where the zamindars are strong, tenures have been broken and rents have been grievously enhanced. Where prosperity and advancing knowledge have enabled the ryots to resist illegal or unjustifiable proceedings, the zamindars have failed to obtain their fair share in the increasing value of produce, and have often found difficulty in collecting the existing rental.

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The rent question in Orissa.

Reg., L R S, April 1873, Nos 40-44.

9. The Board of Revenue, in making a report dated the 12th October 1871, regarding the levy of illegal cesses in Orissa, referred to the ryots in that Division as being ignorant, listless, and impoverished. When submitting the matter to the Government of India in 1873, Sir George Campbell wrote:—"In some parts of Orissa, at any rate, the Government settlement made direct with the hereditary ryots has been utterly set at naught; the Government leases have been taken from the ryots; the rents fixed by the Government officers have been increased many fold; and the main object of the extension of the settlement for a fresh term of thirty years after the famine, *viz.*, permitting the ryots to hold on at the old settlement rates, has been utterly defeated." After referring to testimony from which he inferred that the ryots of Cuttack were reduced to a state of poverty and subjection, and that the old *thani* or privileged ryots of Puri had sunk into tenants-at-will, he continued:—"For the rest, these papers show conclusively the utter failure of the system adopted in Orissa of making a minute and careful settlement of the rights of all parties, and then leaving the settlement to itself without the supervision of Government and the machinery of tahsildars, kanungoes and village accountants, by which settlements are worked and carried out in other Provinces. Nowhere was the settlement more carefully made, or made in greater detail than in Orissa—perhaps nowhere were the status and privileges of the ryots so well protected in theory as in Orissa; yet we find, after the expiry of a thirty years' settlement, during which no annual or periodical papers were filed, and the settlement records were in no way carried on, that this whole system of record and protection has utterly collapsed; the records have become waste paper, and the ryots supposed to be so well protected are amongst the most oppressed in India." Sir George Campbell urged the compilation of a new record of rights. But the Government of India in 1874 did not think it desirable to take measures for the re-settlement of Orissa, and preferred to trust for the time, at any rate, to improved administration to alleviate any evils which might exist. This decision was approved by the Secretary of State, who concurred in the view of the Board of Revenue that the zamindars would regard the formation of a fresh record of rights as a re-opening of the settlement extended in 1868 for a further period of thirty years, and therefore as involving a breach of engagement. The present Bill does not, of its own force, apply to Orissa; but power is taken to extend it to that part of the country. We hope that in 1897, on the expiry of the current term of thirty years, the operations of the new settlement will bring on record and definitely establish the rights of all classes of the tenantry.

Despatch No 9, dated 19th March 1874.

Illegal cesses.

139 40.

10. In 1873, following up the information received from Orissa, Sir George Campbell instituted general inquiries as to the levy of illegal cesses throughout Bengal. It appeared that the practice was nearly universal; in fact, so widespread and deeply-rooted was it that the Lieutenant-Governor hesitated to attempt its thorough eradication. He contented himself with proclaiming to the ryots that no cesses were leviable from them except the Road Cess under the Act of 1871. The zamindars were thus, in some degree, thrown back on the ordinary law of enhancement.

The rent question in the Eastern Districts.

11. Meanwhile, in the eastern districts of Bengal Proper, there were tendencies and circumstances at work which led to events demonstrating the great difficulties in the way of the determination of rents and the settlement of claims to enhanced rents existing under the present law. Prosperity had been stimulated by the development of the jute trade; the Muhammadan element preponderated in the population; in extensive waste lands reclaiming settlers had obtained leases on favourable terms; and, in general, the ryots were strong and well-to-do, and were yearly becoming better acquainted with their

rights and better able to assert them. In these circumstances even legitimate demands might not be met without a struggle; whilst exaction was likely to provoke the retaliation of outrage or tumult The Dacca Divisional Report for 1872-73 mentioned violent collisions between combinations of ryots and their landlords' club-men, and referred to the fire-raisings by which ryots on strike sought to prevent people from siding with their opponents. The Pubna District in 1873 became the scene of extensive agrarian disturbances. IV, 137

12. The causes and character of the Pubna outbreak strikingly illustrate the general nature of rent disputes in Bengal The affair originated in the Isafshahi Pargana, formerly owned by the Rajas of Nattore. In the decay of that ancient family a part of its possessions was purchased by new-comers whose relations with their ryots and with each other appear to have been unfriendly from the first. Collections were raised by decreasing the standard of measurement and by imposing illegal cesses, which were afterwards more or less consolidated with the rent. The ryots never gave any written or formal consent to the conversion of these voluntary *abwábs* or cesses into dues which could be realised according to law. In time the rent rates of Isafshahi came greatly to exceed those of neighbouring tracts. Two causes of the dispute were thus a high rate of collection compared with other parganas, and an uncertainty as to how far the amount claimed was due. A third cause was the violent and lawless character of some of the zamindars and of the agents of others. There had been affrays in which men were killed by spear wounds Swordsmen had been sent to make collections, and cases of attacks by club-men and of kidnapping are mentioned in the reports Pros Home August 1873 Nos. 24—9

The Pubna outbreak of 1873

13. Sir George Campbell's inquiries in regard to illegal exactions, and the prospect of the extension of the Road Cess Act to the district, led the zamindars to demand written engagements from the ryots. One Protab Chunder Bannerji required his ryots to execute agreements in writing, binding them to pay rents at rates higher than those prevailing in any other part of the district, to hold their lands subject to immediate ejection should they ever have the misfortune to quarrel with him, and finally to admit that the quantity of land held was that found by measurement with a pole shorter than the standard pole used in former years. Some of the ryots signed *kabuliyats* (agreements) on these terms, but the majority refused; whereupon the zamindars resorted to the Civil Court, producing measurement papers which, if genuine, showed that the lands had been thrice measured, and that the ryots had paid the rent demanded for the last ten years. The Munsif granted a decree, but the Civil Judge, on appeal, found that the accounts were false and concocted for the purpose of the suit, and declared the rent receipts filed by the ryots to be genuine, though the other side had pronounced them to be forgeries. He accordingly gave a decree in favour of the ryots.

The same continued

14 Emboldened by the result of this litigation, the rest of the ryots refused to execute agreements, repudiated certain payments which had been from time to time added to their dues, and combined for mutual support against the zamindars. The movement spread to other estates and the league was fully formed by about May 1873 Messengers were despatched to those who held aloof, threatening that armed bands would be sent to plunder them unless they declared themselves ryots only of the Queen; and the peasantry began to march about the country in large assemblages, one or two thousand strong. The people, as a rule, notified to the Magistrate their adherence to the league; and by the 1st July 1873 this had been done by the inhabitants of 269 villages. The ryots demanded the low rates of the Raja of Nattore's time, the cubit of measurement adopted by one of the early district officers, and the abolition of illegal cesses. They ceased to pay rents and were said to be engaged in making measurements They announced that on ascertaining what was due by their own calculations, they would deposit the amount in the Civil Court according to law.

The same continued.

15. Most of these ryots were Muhammadans, and nearly all the zamindars and their superior servants were Hindus. Although some acts of mischief and plunder were committed, in the main the people restricted themselves to tumults and processions.

The same

Disorder was repressed by executive measures of the usual kind; but the movement continued to extend, particularly towards Bogra. The general view of Sir George Campbell may be said to have been that unless the Government was prepared to grapple with the whole of an enormous subject and to take permanent measures to obviate or deal effectively with rent disputes throughout Bengal, it was best to leave the parties to settle their differences as they could, without further interference than was necessary for the maintenance of order. Early in 1874, when the final report on the disturbances was received, the Lieutenant-Governor's hands were full of the affairs of the famine; and the consideration of legislative measures to prevent illegal exactions by the zamindars was postponed till some more convenient opportunity.

Orders of the Secretary of State

16. All these circumstances were reported to the Secretary of State in a series of despatches, which elicited a series of replies. Referring to the levy of illegal cesses in Orissa, Lord Salisbury* acquiesced in the conclusion that the Lieutenant-Governor could not be expected to pursue the question of zamindari oppressions and exactions at a time when he was fully occupied with other matters of grave moment. It was intended that when the pressure of famine business had diminished, attention should again be directed to the subject. In the matter of the Pubna disturbances,† His Lordship similarly accepted the view that the time for attempting an effectual remedy had not arrived.

* Despatch No 34 (Revenue), dated the 18th June 1874.

† Despatch No. 12 (Judicial), dated the 16th April 1874

Attempts to deal with the rent question since 1874

17. During the interval between 1874 and the present time, repeated attempts have, year by year, been made to solve the difficulties of which the Pubna disturbances were a symptom and an illustration. In March 1875, Sir R. Temple reported that indications of renewed agrarian trouble were perceptible in Eastern and South-Eastern Bengal. In some parts of the country there still seemed to be a disposition amongst the ryots to combine in leagues or unions. The disputes turned on the question of enhancement, the zamindars demanding higher rents in consequence of the rise in the price of produce, and the occupancy ryots claiming to pay no more than the old customary rates of the locality. As a precaution to facilitate the maintenance of tranquillity, Sir R. Temple recommended that the Local Government should be empowered to appoint the Collector or other officer to settle authoritatively disputes of this kind. Accordingly, the Agrarian Disputes Act was passed in the following year. The Act, though providing rules for the determination of rent rates, was merely a measure of procedure intended to meet emergencies like those of 1873, and did not introduce any general change in the law of enhancement. It was only to be brought into operation if it appeared that a serious dispute existed in any tract of country in respect of the adjustment of rents or as to arrears of rent; and it was not to be retained in the statute book for more than three years. As a matter of fact, it has expired without being enforced on any occasion. In March 1876, during the course of the debates on the Act, the Hon'ble Kristodas Pal, a representative of the zamindars, urged that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a dead lock. The ryot did not know what he was liable to pay, and the zamindar did not know what he was entitled to receive as rent, in consequence of the admitted rise in the value of produce. Sir R. Temple, referring to the substantive law relating to rent, concurred in the opinion that some principle for determining rates of rent should be fixed by legislation. He alluded to the great difficulties of the subject, and promised that the best efforts of his Government should be directed to its consideration. Before this, in June 1875, the British Indian Association had represented that the struggle between zamindars and ryots, due to the indefiniteness of their relations and the readiness of the ryots to combine in withholding rent, could only be ended by a general revision of the rent law.

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The Agrarian Disputes Act.

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Sir Richard Temple's Bill of 1876

18. In August 1876, Sir R. Temple submitted the proposals for a Bill, which have been already mentioned in the 5th paragraph of this despatch. He pointed out that the Agrarian Disputes Act could do little more than substitute one agency for another, and that it was necessary to lay down principles which should guide the determination in all rent disputes by whomsoever decided. His

main recommendation was that the rate payable by occupancy ryots should be fixed, as in the Punjab and Oudh, at something less, by a certain percentage than the rate paid by unprivileged ryots, where this could be ascertained. Where the unprivileged rates could not be discovered, he wished the occupancy rate to be calculated at a certain proportion of the value of the gross produce. A Bill was prepared in this sense, but the opinions upon it showed that the village rent rates for ordinary occupancy and non-occupancy ryots were the same in most districts, so that it would not be practicable to adjust the one by reference to the other. There was delay in ascertaining the views of the Secretary of State owing to Lord Salisbury's absence at Constantinople. It thus happened that in January 1877 Sir R. Temple, shortly before he made over charge of the Lieutenant-Governorship of Bengal to his successor, proposed that the amendment of the substantive rent law should be deferred, and that only so much of the Bill of 1876 as provided for the better realisation of undisputed arrears of rent should be immediately proceeded with. Sir Ashley Eden adopted this suggestion, and, in requesting sanction to introduce a Bill for the above purpose into the Bengal Legislative Council, observed that, under the present procedure, the recovery of rent by legal process, even when the arrear is not disputed, is so tedious and costly as practically in many cases to involve a denial of justice, and that if the zamindars were to be required, as they now are, to pay the Road and Public Works cesses, recovering half the amounts from the subordinate holders, the Government was bound in equity to aid them in obtaining their dues from the ryots.

Sir Ashley Eden's Bill of 1878.

19. We agreed to the course proposed by Sir Ashley Eden, and in February 1878 we received from his Government a Bill to provide for the more speedy realisation of arrears of rent, which was partly modelled on the summary procedure of Act V of 1866 for dealing with bills of exchange. The Lieutenant-Governor was advised that the Bill ought to be introduced in the Legislative Council of the Governor General, and not in the local Legislature; and for this opinion there were good technical reasons, depending on the language of the Code of Civil Procedure. It was, however, held by our Government that it would be better to amend the Code than to remove the Bill into the Council of the Governor General. Act XVIII of 1878 was therefore passed, and the Bengal Legislature was left to proceed with the Bill.

The Select Committee in 1879 proposes the revision of the whole law.

20. But it was found impracticable to confine the scope of the Bill to the limited object indicated by its original title. The discussion as to the transferability of the right of occupancy had materially advanced, and it had been recognised in Bengal, even before the Civil Procedure Code was amended, that the legislature would have to alter the law with reference to ejectment, distraint, instalments and deposits of rent, and sub-letting. It began to be apparent that many of the proposed provisions would eventually prove to be intimately connected with other portions of the existing law, not ostensibly affected by it; and in February 1879 a majority of the Select Committee on the Bill recommended that the whole subject of a revision of the rent law should be once for all fairly faced. This proposal was supported by Sir Ashley Eden; and in April 1879 we sanctioned the formation of a Commission to prepare a digest of the existing statute and case law and to frame the draft of a consolidating enactment.

The rent question in Behar. Indigo.

21. Meanwhile, circumstances not yet mentioned had led to a project for special legislation in regard to Behar. Your Lordship will recollect the troubles connected with the cultivation of indigo, which arose in the Rajshahye, Maldah, Moorshedabad, Nuddea, Jessore, and Faridpur Districts about 22 years ago. The report of the Indigo Commission of 1860 exhibited the means adopted to induce the ryots to cultivate what was to them an unprofitable crop, and showed that under-tenures were taken at excessive rents, cattle seized, men illegally imprisoned, and other modes of oppression used to compel the production of indigo for which the planters paid the ryots an inadequate price. At last the ryots refused to continue the cultivation, and the industry broke down in that part of the country.

Indigo in Tirhut and Champaran, 1866-68.

22. Very similar evils began to attract attention in Tirhut and Champaran about the year 1866-67. In the latter district, indeed, there was something like an outbreak,

and one bungalow was fired. In both districts the principal form of resistance was a refusal on the part of the ryots to sow indigo The Commissioner, Mr. Jenkins, in reporting on the matter, enumerated, amongst the causes of dissatisfaction, the harassment of the ryots by the underlings of the factories who had for years "carried on all kinds of oppression and extortion," and the fact that indigo cultivation did not in itself pay the ryot for his labour He believed that every ryot cultivated indigo under pressure, such pressure consisting in a threat to enhance the rents of his lands all round unless he would grow indigo, and to eject him if he defaulted in payment of the enhanced demand. The planters, looking to indigo for their profits, paid high rents to the large landholders under whom they held; and the landholders, in order to keep up their rents, lent the whole weight of their influence to the cause of the planters. One instance is cited in which a planter bound himself to pay Rs. 52,000 a year to the zemindar, whilst his collections from the cultivators only amounted to Rs. 40,000; so that there was a loss of Rs. 12,000 annually to be made up by profits in indigo. The Champaran planters raised their rates of payment for the plant, and the Lieutenant-Governor deprecated Government interference, thinking that it would be regarded as an authoritative condemnation of the Indigo industry, and would lead to serious mischief. But the Governor General in Council considered it necessary to administer a very serious warning to the planters. The Government, it was said, could not, without abandoning its duties to the people, tolerate such a system as that described in the correspondence; and would, if the planters were themselves unable to reform it, be compelled to interfere. The Governor General (Lord Lawrence) recorded a separate minute, in which he expressed the conviction that a law was required which would protect the cultivators both from the planters and from the zamindars. "I believe," he said, "that it will be necessary for the Government sooner or later to interfere, and to pass a law which shall thoroughly protect the ryot and make him what he now is only in name, a freeman, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it."

Indigo in Tirhut, 1873

23. Here the matter ended for a time; but in August 1873, the Lieutenant-Governor (Sir George Campbell) forwarded some papers regarding the feelings of Natives towards Europeans in Tirhut. He remarked on the practices of forcing the ryots to grow indigo and of compelling them to exchange their lands, so that the best plots were picked out by the planters; and he took occasion to say that "the want of a definition and record of rights in land, and the unsatisfactory character of the Civil Courts, by which alone those rights can be determined, are great evils; and that, on the other hand, the Behar indigo system is not altogether a healthy one based on free trade, but that it has about it elements of *quasi*-feudal compulsion." As at that time, however, Champaran and Tirhut were threatened with scarcity, the occasion was considered inopportune for making further enquiries; and the matter was merely commended to the watchful attention of the Government of Bengal.

Causes of poverty in Behar Mr Metcalfe's opinion

24. In the autumn of 1875 apprehensions were entertained that scarcity might again occur in Northern Behar, and two officers, Messrs. Geddes and MacDonnell, were deputed to report upon the condition and prospects of the country Some very grave statements, which had been made by Mr. Metcalfe, Officiating Commissioner of the Patna Division, in December of that year, were specially commended to their attention. Mr. Metcalfe had said, "in the present year there are excellent crops in some places and none at all in others. Within seventeen years there have been five similar years, in each of which a certain part of the population has died of starvation." After enumerating what were, in his opinion, the causes of this state of things, he continued: "Not only, therefore, is the cultivator left with an area barely sufficient to raise the food he requires for his family, but in times of drought, having no margin of cultivation left, he is short of food, as the yield is below his requirements."

25. Messrs. Geddes and MacDonnell reported in January 1876. "How comes it," they asked,

"That, with the present, not very grave, vicissitude of season, the Imperial Government should be expected to interpose in regard to a most fertile region, the great bulk of whose agricultural profits go elsewhere than to the Imperial Exchequer? How comes it that Behar,

with an industrious population, the most fertile soil in India, a territory comparatively very lightly assessed in land tax—how comes it that this Behar should be seeking imperial relief oftener and more extensively than the regions less fertile and far less (*sic*) heavily assessed by Government?" "The explanation," they went on to say, "as to why the three northern sub-divisions should not tide over the vicissitude by falling back on food reserves, or on money resource, summarises itself briefly thus. The whole conditions of agricultural industry there are such as to render it precarious. There is no sufficient certainty as to tenure. It is impossible for the population to fall back this year solely on accumulated reserves, whether of grain, of property, of money, or of credit. For the whole conditions of life, as will be seen from the Collector's reports, are such as to preclude any sufficient accumulation of the kind. The ryots cannot fall back on any credit fund like the tenant-right of other parts of Bengal, for practically there is no such right available to offer in pledge. The people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry."

Opinion of Messrs. Geddes and MacDonnell.

Reference was made to the unsatisfactory character of rent suits in Behar, and to the *thikadári* or assignment system, consisting in the sale and purchase of the control which the zamindar is able to exercise over the ryot, including therein almost unlimited powers of distraint, enhancement and ejectment. The report also alluded to the element of compulsion in, and other abuses connected with, the cultivation of indigo. One experienced officer, it was said, had estimated that indigo occupied 200,000 acres of the very best soil in the Patna Division. There was some ground to suppose that in Muzaffarpur and the northern sub-division of the Bhagulpur District, one-third of the culturable area was under *thika* assignment to Europeans. The practice of illegal distraint, or of sending out a *peon* (messenger) to prevent the reaping of the crop as a means of pressure in order to enforce compliance, whether with legitimate demands or exactions, was very fully described; and the points where violations of the law habitually occurred were specified with precision. Messrs. Geddes and MacDonnell, however, did not recommend special legislation, though it had been suggested by some of the local officers.

Orders on the above.

26. Sir Richard Temple, in reviewing this report, remarked that the condition of the peasantry was undoubtedly low in Behar,—lower than that of any other peasantry, with equal natural advantages, which he had seen in India. The Agrarian Disputes Act had not yet been passed; and, pending its enactment, he suspended his judgment as to whether any interposition in respect to tenant-right in Behar was necessary or desirable. He considered that a remedy should be applied to the abuse of the power of distraining the ryots' crops. The Government of India promised the Lieutenant-Governor its support in any measures he might propose for ameliorating the condition of the people of North Behar; and the observations of the Secretary of State* upon this correspondence were as follows:—

* Despatch No. 32, dated the 19th October 1876.

"Your Lordship in Council is fully aware that the situation in North Behar is one of grave anxiety. The well-being of the population is described in the able report of Mr. Geddes as resting on foundation of a very precarious character, and it will demand the utmost vigilance and discrimination of the Government of Bengal to deal with the complication with which the whole question is embarrassed. Your Excellency in Council has wisely determined not to have recourse to immediate and necessarily incomplete remedies, but to leave the subject to the attentive consideration of the Government of Bengal, which will gradually introduce such ameliorations as full experience and intended inquiry may dictate. I fully approve of the resolution of Your Lordship in Council, and shall await with interest the result of the measures which the Lieutenant-Governor, under the sanction of your Government, shall deem it his duty to adopt."

Indigo in 1876.

27. In October 1876, the indigo question was again taken up on the appearance of an article in a native newspaper directed against the planters. Sir Richard Temple reported that there had been no cases typical of general discontent or signs of spreading trouble; still the best informed opinion seemed to be that if this great industry was to be maintained, the planters would have to go further than before in making concessions to the ryots. It was, he thought, manifestly desirable to leave the matter as much as possible to be settled between the parties, the Government merely affording protection against duress or coercion. To this conclusion the Government of India gave a general assent.

The same in 1877.

28. On the 29th August 1877, Sir Ashley Eden, having succeeded to the Bengal Government, reported his experiences and the steps which he had taken to place the relations

between planters and ryots on a better footing. He did not altogether endorse the view of Sir Richard Temple above cited. A letter of Sir S. C. Bayley (then Commissioner of Patna), dated the 3rd March 1877, was forwarded, which showed that in five months no less than 142 cases connected with indigo disputes, most of them, indeed, trivial, but some of a very serious kind, had come before the criminal courts. The general conclusion of the Lieutenant-Governor was that the system, as it existed, involved an amount of lawlessness and oppression, principally in the shape of illegal seizure and retention of land, and to a minor degree in the shape of extorted agreements to cultivate and of seizure of ploughs and cattle, which he was not prepared to tolerate. A mass of detailed proceedings was laid before the Government of India, and two cases were referred to as illustrating the absolutely arbitrary and illegal way in which planters considered themselves entitled to dispossess ryots of their land. "One of these cases led to an attempt on the part of the ryot to commit suicide; in the other, to his actually committing it. In neither case did the ryot see any hope of redress or think of applying to the Courts; and though both cases were judicially investigated, yet in neither was any punishment inflicted on the factory people."

A report awaited by the Secretary of State since 1878

29. Sir Ashley Eden further stated that he had been able to induce the planters to initiate some very considerable reforms, increasing, for instance, their rates of payment for indigo, and preventing various harassing practices; amongst others, one "common, not only to planters, but to zamindars generally, of issuing requisitions on their ryots for such things as straw and other local products, either gratis or at wholly inadequate prices, when required for their own consumption." He had under consideration a scheme for amending the rent law, so as to provide in Behar some way of securing the ryots' rights of occupancy and consequent freedom of action; and he noticed that the reforms did not extend to the main point, to which he took exception as lying at the root of the evil, *viz.*, the *thikadári* system. A fuller account of the proposed legislation was invited; and Lord Salisbury in a despatch No. 14, dated 21st February 1878, to which this Government has as yet made no reply, said that he would await the result of the deliberations of the Government of India on the measure for the amendment of the rent law with the view of giving the ryots greater security of tenure. The Government of Bengal has, from time to time, been reminded that a report on this matter was expected. It was stated in 1878 that the question was under local inquiry, and that the Lieutenant-Governor proposed to appoint a Committee of experienced Behar officials to advise upon it. In 1879 the Report of this Committee was referred to the Rent Commission.

Constitution of the Behar Rent Committee

30. The papers connected with the local inquiry preceding the appointment of the Behar Committee are now before us, and are included amongst the enclosures of this despatch. It will be remembered that in April 1877 Sir A. Eden had accepted Sir R. Temple's proposal to proceed only with so much of the then pending Bengal Rent Bill as related to a summary procedure for the recovery of arrears of rent. In the previous March* Sir S. C. Bayley had furnished his report on the indigo cases. The report of Messrs. Geddes and MacDonnell bears date, as already mentioned, in January 1876. On the 7th August 1877, shortly before addressing us on the indigo question, Sir A. Eden had explained demi-officially to the Commissioner of the Patna Divison considerations which indicated the necessity of a special Rent Law for Behar, and had asked his advice and opinion on the subject. The language then employed was repeated a year later in the official orders constituting the Behar Committee, and has been quoted by the Famine Commission.† There was a general concurrence of opinion *that the law should, by a simple and effective procedure, enable a ryot to hold his land subject to fixed conditions of tenure, to maintain his rights of occupancy when acquired, to be certified exactly of the amount which he would have to pay for it annually, to resist illegal distraint, illegal cesses, and illegal enhancement, and to have at hand a trustworthy record of demands and payments.* The correspondence further discloses abuses connected with produce rents and appraisement which have also been alluded to by the Famine Commissioners.‡

* Bengal Government No 2122, dated 7th September 1878

† Report, Part II, pp 117-18, paragraphs 21-22.

‡ Report Part II page 131, paragraph 37.

Amalgamation of reports and Bills for Bengal and Behar

31. Your Lordship will perceive that, for a period of four years, the Secretary of State has been awaiting proposals for the amendment of the Rent Law in Behar. It will be noticed that the idea of some special rent legislation for Behar was entertained by Lord Lawrence fourteen years ago; that when the reports of 1875 and 1876 disclosed the unhappy condition of the people, it was acknowledged that some remedies must be applied; and that from August 1877 up to the present time the efforts to bring into shape some measure which shall meet the circumstances of the province have been unintermittent. In the proceedings of the Behar Committee two Bills were prepared: one was drawn up by Mr. Worsley, the Collector of Muzaffarpur, who adopted the arrangement of the North-Western Provinces Act; the other, framed by Mr. Finucane, C..S, the Secretary of the Committee, was founded on Act VIII (B. C,) of 1869, with alterations and additions. The Behar Committee, when submitting its Report on the 8th March 1879, proposed amendments affecting so many provisions of the present law that they did not deem it sufficient to draft a supplementary Bill. They considered that the whole Rent Law should be re-cast; and, holding this duty to be beyond their powers, recommended that the draft should be undertaken by an officer of the Legislative Department. Thus two Committees, dealing with distinct Bills, had simultaneously arrived at the conclusion that the time had come for general legislation. The Select Committee on the Bill to provide for the more speedy realisation of arrears of rent reported in this sense from Calcutta about a fortnight before the Behar Committee completed its labours at Patna; and our decision, sanctioning the appointment of the Bengal Rent Commission, bears date more than a month after the Report of the Behar Committee was signed, but before it had reached our Government. As we have stated above, the Lieutenant-Governor referred the Report of the Behar Committee to the Rent Law Commissioners, who incorporated it in their proceedings, and included special provisions applicable to Behar in their general draft Bill. It is due to these circumstances that we have been unable, until now, to proceed with the rent question as it affects Behar in particular.

Causes of depressed condition of Behar

32 The evidence before us of the depressed and precarious position of the tenantry in that part of India is full and conclusive. It would be altogether a mistake to suppose that the unfortunate state of things which there exists is mainly, or even very largely, due to indigo planting. The facts connected with the cultivation of indigo, which were brought to notice some years ago, testify, indeed, to the possibility of serious oppression, and strikingly exhibit the manner in which persons exercising the authority of landlords could trample upon the rights of defenceless peasants. But these facts, taken by themselves, merely illustrate abuses of proprietary power which are rife throughout Behar. The area under indigo cultivation is an insignificant fraction out of the 23,670 square miles which constitute the Patna Division. It is manifest that the majority of the ryots in the whole of that large tract of country are rack-rented. The ryots of the Shahabad District appear to be better off than others; but for a general view we would refer Your Lordship to the Note drawn up by Mr. Reynolds on the 11th December 1880, after a visit to Bankipur, IV, 375 ff. during which he had conferred with experienced officers. It was urged upon him that the great evil, which calls for remedy in Behar, is the arbitrary enhancement of rent at the will of the landlord. The Collector of Patna reports Metcalfe, III, 705. that the mass of the tenantry are now paying rents which have doubled within the last 16 years. The Covenanted Deputy Collector of Gya calculates that Finucane, III, 935. the rental of the different districts is at present from twice to four times the amount paid at the time of the Permanent Settlement. Mr. Reynolds shows from the road cess returns that the incidence of rent is higher in the Patna District than in any other disrrict of Bengal; higher in Darbhanga and Saran than in any other districts except Hooghly and Burdwan; and higher in Gya, Shahabad, and Muzaffarpur than in any other districts except the above and five more, of which two, Rajshahye and the 24-Pergunnahs, pay the same average rental as Gya, and one, Rangpur, pays the same average rental as Shahabad. The only district of the Patna Division, where the average rental does not appear to be unusually high, is Champaran, of which the circumstances are exceptional, as the proportion of waste land is very large.

State of the case as described by certain zamindars and planters

33. Without entering upon any detail in support of our opinion that the Behar ryot is poor and oppressed, we will cite briefly a few descriptions of prevailing circumstances or practices given by zamindars or planters themselves. Major Hidáyat Ali, an important landholder in Behar, writes on 20th September 1877: "The ryots of this province, *viz.*, the heads of families, and even the women and the male adult children of the agricultural classes, though they labour hard, are yet in a state of almost utter destitution, and that owing to the heavy assessments laid on them." His opinion is characterised by Colonel Emerson, the Cantonment Magistrate of Dinapore, as unprejudiced and valuable

Behar Rent Papers, page 8

Mr. Worsley, Collector of Muzaffarpur, reports on 9th October 1877:

"That illegal distraint was universally practised in this district I well knew; but I had not expected to receive the following naive confession from all the principal zamindars of Hajipur Sub-division 'The zamindars confess that they resort to private distraint in preference to distraint through the Court, the latter involving expense which has to come on the ryot, and diminishing his means of paying his legitimate dues, as well as of leaving a sufficient balance for his own support.'"

Ibid, page 26

Revenue, Agriculture and Commerce Proceedings, December 1877 Nos 1—4, pages 97 98

Mr. Minden Wilson, one of the oldest planters in the Muzaffarpur District, in the course of a deposition before a Civil Court taken in May 1876, stated as follows:

"I can define what is called factory influence The factory influence is generally represented by a *peon* with a stick I think that gives the idea of the influence I do not think the factory influence extends beyond that It is all due to coercion The factory has no legal influence independently of contracts or agreements. I did depose previously that planters had not moral influence in their *dehâts* (circles of villages). I swear again as it is my opinion that a manager has no moral influence in his *dehât*. The planters are supposed to place themselves in the place of zamindars from whom they take leases. They do partly—some *thikadars* more and some less, it depends on the capacity of the managers The amount of influence depends on the capacity of the manager It is customary that zamindars have a great influence over the ryots Leases are taken from them for the purpose of exercising that zamindari influence over them to raise indigo The ryots know that the influence may be exercised against them at any time either for the purpose of raising indigo or for any other purpose The rent is allowed to recur into arrears, and money permitted to be owed to the factory for the purpose of increasing that influence. It is the rule that orders from the manager are obeyed by ryots without exercising any influence. The factory influence is mostly due to coercion, and not all due to coercion as I stated in my examination-in-chief"

Mr. Riddell, a proprietor and manager of the Singhai factory, deposed:

"By moral influence, I mean factory influence. I mean that we have a right to have a cart by offering him five annas a day when the man has an offer of twelve annas a day from an outsider, five annas being the usual rate paid in the mofussil * * * To obtain influence over the ryots we take leases of villages from zamindars. If the ryots on being asked would agree to cultivate indigo, there would be no necessity for taking leases of villages. We lend money, which is technically called *zarpeshgi*, when we take leases of villages, that is to induce them to grant leases We usually pay to our lessors a larger jumma than what we collect from the ryots as rent. The object for paying a higher jumma is to obtain influence over the ryots in order to induce them to cultivate indigo * * * * By zamindari influence I mean that a zamindar takes carts and employs labourers for his own use without paying for them, or paying too little for them, he makes his ryots attend his weddings; he collects the rent from them, he takes *salámis* on various occasions. These are matters of custom. This is a custom which I, as a factory manager or zamindar's lessee, did not adopt."

Behar Rent Papers, page 21.

Statements made by the Government Pleader of Gaya in or about October 1877 (himself a landholder of the district, and said to be a just man) are to the effect that the zamindars exact from the ryot of Behar numerous and heavy illegal cesses; that the rents of holdings exempt by law from liability to enhancement are raised every year; that ryots are illegally evicted; and that the payment of rent is enforced by duress, the ryot being detained at the zamindar's place of business, or subjected to annoyance by the zamindar's dependants sitting at his door, preventing ingress and egress and access to the village wells, until the demand is satisfied.

State of things at the present time

34. These admissions were made four or five years ago. The recent harvests have been good. The planters have formed an Association to repress abuses. A great part of the evils we describe is unquestionably due to defects in administration rather than to defects in the law. Many capable officers have, of late years, been posted to Behar Districts. Sir Ashley Eden has devoted much attention to introducing administrative improvements in Behar. In one or two districts endeavours

have been made to familiarise the ryots with the true extent of the zemindars legal demands upon them, by advising them to take copies of the road cess returns showing the amounts of rent beyond which the zamindar can effect no legal recovery. Nevertheless, bearing in mind the mass of particulars before us, we concur in the view of the Famine Commission that the condition of the Rent Law in Behar is a very grave hindrance to agricultural prosperity; and we observe with concern that Mr. Reynolds, in his Note above referred to and dated only about a year back, sums up his conclusions in these terms:

"The Behar ryot of to-day is equally deficient in the knowledge of his rights, and in the spirit which would lead him to assert them. He is at once industrious and unthrifty; for he knows that it is his destiny to labour, and he feels that it would be useless for him to attempt to save. Accustomed to a low standard of living, he has no thought of improving his condition, because hitherto, the circumstances of his lot have made permanent improvement impossible to him His best hope has been that the zamindar and the *mahajun* will leave him a bare sufficiency to support life till his next harvest time comes round."

Reasons for interposition in the Eastern Districts

35. The remark made in the 5th paragraph of this despatch, that, for the last nine or ten years, it has been practically certain that the whole Bengal Rent Law must, at some time, be revised, requires some amplification. We have guarded ourselves against the unsound inference that any evils connected with the enforced cultivation of indigo are the only, or even the chief, wrongs which need remedy in Behar, a province where, we regret to believe, extortionate imposts, wrung from the ryots too often by unlawful means, are general. In regard to Eastern Bengal, it would involve misapprehension to imagine either that serious rent disputes, culminating in turbulence, were a novelty in 1873, or that even at the present time when that part of the country is quiet and prosperous, there is no risk of further agitation or commotion. From time immemorial, the levy of rent has been a matter of contest in different parts of Bengal; nor should it be forgotten that the people in proportion as they gain strength and learn that they possess it, are the more ready to take and press advantage. The comparative weakness of the zamindars in the Eastern Districts is not a reason for refraining from interposition in that portion of the Lower Provinces. If they feel that their traditional power is shaken, they are the less likely to be scrupulous in its tenacious defence. If the ryots perceive that they can sometimes resist even legitimate claims with impunity, there is no probability that they will exercise any generous self-control. Only last summer a fresh application was submitted by the Commissioner of the Rajshahye Division for special police in the Pubna District, the Magistrate having reported that the conditions of the dispute were unchanged, and that if the force were withdrawn, disturbance would again break out. IV, 166.

Protective purpose of the legislature as yet unfulfilled

36. We have confined our narrative to events which have happened since the passing of Act X of 1859, because it is from the consideration of these that the necessity for fresh legislation must be established. But, as Your Lordship is well aware, the real fact is, that we have now before us a duty which the Indian Government openly undertook at the time of the Permanent Settlement, but which, from that day to this, has never been adequately discharged. We have mentioned reasons for the opinion that some of the objects of Act X of 1859 have not been accomplished, and we shall state further grounds for that belief below. The legislation of that year was, we fully admit, the first earnest endeavour to extend to the ryots the protection which the Government had promised them now nearly a hundred years ago. Lord Canning in giving his assent to the Act on the 29th April 1859, wrote:

"Lastly, I have to observe that no one doubts that it has long been desirable that the important questions connected with the relative rights of landlord and tenant dealt with in this Bill should be settled, that no objection is suggested to the nature of the settlement which the Bill contemplates; and that the Bill is a real and earnest endeavour to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence, which they have not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zamindars, such as ought long since to have been provided. This being so, I think that the Bill ought to pass into law."

That Act X of 1859 did most beneficially restrict the authority of the zamindars, there can be no doubt. It revoked the power previously possessed by

them of compelling their ryots to attend their cutcherries or places of business,—a power which was abused to levy enhanced rent, and to force enhancement and all sorts of illegal cesses upon the villagers; and it rescinded previous provisions under which a zamindar could sue any person on an allegation that he was his ryot and have him arrested, even though he did not attempt to prove his case against him. But, bearing all this in mind, we still hold that the further intention of the Act in regard to declaring and securing the substantive rights of zamindars and ryots has not yet been attained.

Recapitulation

37 If, immediately on the passing of the Act, measures had been adopted to record the rights of the cultivators and to map their fields, its operation might have been much more successful. As it is, the Act unstrengthened by local enforcement in detail, or by executive processes for ascertaining rent rates, has not prevented chronic class hostility, where the ryots are strong, nor, where they are weak, chronic oppression. In some places legal enhancements have become all but impracticable, and legal dues are unreasonably withheld; while in many parts of the country the rights which the legislature meant to confirm and maintain are precariously held on sufferance and stand in need of further definition and support. In these circumstances our feeling is not one of doubt as to the necessity for legislation, but of regret that legislation has been so long delayed. At first, it was clearly right that the sufficiency of Act X of 1859 should be fully tested; and more recently, the pressure of the famine of 1874, the demands of other important affairs upon the attention of the Government, and the great complexity of the subject have retarded its complete consideration.

Main proposals of Sir Ashley Eden

38. At the present time, however, the rent law in Bengal, whether enacted by the Legislature or declared by the Courts, as well as the constitutional claims of ryots and zamindars respectively, having been thoroughly examined, we are in a position to state our conclusions upon the proposals of the Lieutenant-Governor. Of these the two most important are—

First, that the great body of the cultivators shall be restored to the position which they held under the ancient land law and custom of the country; and

Secondly, that the beneficial interest of the settled ryots, who form the mass of the cultivating classes of Bengal, shall be determined by authoritatively establishing renewed or revised rates on a system analogous to that of the old *pergunnah* rates.

Grounds on which they are supported by this Government

39. We concur in the spirit of both of these proposals. The first proposal, in the shape in which it appears in the Lieutenant-Governor's Bill, would not, in our opinion, give sufficient effect to the policy which both we and the Lieutenant-Governor are desirous of following. We consider that the reservations made at the time of the Permanent Settlement amply justify our interposition for the purposes both of declaring and securing the rights of the tenantry and of regulating the rates of rent; and we think, with Sir Ashley Eden, that it is expedient for the cultivation of the soil to be kept in the hands of a substantial peasantry, able to bear up against vicissitudes of season and the pressure of bad times; and with the Famine Commission, that a system of holdings guaranteed by conditions of permanency and protected from arbitrary enhancement of rent will tend materially to promote the accumulation of property, the sound growth of credit, and the progress of agricultural improvement.

Rights under the Permanent Settlement

40. The questions, what were the relative rights of the zamindars and the ryots before the statute law began to interfere, and in what degree those rights were modified by the Regulations and other enactments, have been very exhaustively discussed during the course of the present proceedings by the members of the Rent Commission, by the Lieutenant-Governor and various other authorities, and by the zamindars. We shall content ourselves here with citing evidence showing what the authors of the Permanent Settlement intended to provide; what, as a matter of fact, was provided in the Regulations of the Permanent Settlement; and in what sense those Regulations were understood by the Government and by some of its best informed officials before the documents, which explain the proceedings of 1793, faded, to a great extent, out of general recollection.

41. In his well-known Minute of the 3rd February 1790, Lord Cornwallis observed that the right of the Government to fix at its own discretion the amount of the rents upon the lands of the zamindars had never been denied or disputed. He further said—

Lord Cornwallis.

"I do not hesitate to give it as my opinion that the zamindars, neither now nor ever, could possess a right to impose taxes or *abwabs* upon the ryots; and if from the confusion which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had possession of the country, new *abwabs* have been imposed by the zamindars or farmers, that Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of like abuses in future. Neither is the privilege, which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zamindars. Whoever cultivates the land, the zamindar can receive no more than the established rent, which, in most places, is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit. The practice that prevailed under the Mogul Government of uniting many districts into one zamindari, and thereby subjecting many people to the control of one principal zamindar, rendered some restriction of this nature absolutely necessary. The zamindar, however, may sell the land, and the cultivators must pay the rent to the purchaser."

42. The Court of Directors, in sanctioning the proposals of Lord Cornwallis, wrote:—

The Court of Directors.

Revenue General Letter, dated 19th September 1792. Harington, II, pp. 188 9.

"But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold and subject only to the revenue now settled; and while we disclaim any interference with respect to the situation of the ryots or the sums paid by them, with any view of an addition of revenue to ourselves; we expressly reserve the right, which belongs to us as sovereigns, of interposing our authority in making, from time to time, all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possession, or loaded with unwarrantable exactions. A power exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders; and, instead of diminishing, will ultimately enhance, the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government; under which it appeared to be a general maxim that the immediate cultivator of the soil duly paying his rent should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zamindar; for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the sovereign."

43. Immediately before the Permanent Settlement, the Court of Directors also communicated to the Government of India the following instructions:—

The same.

"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced. * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary, for the protection of the ryots and subordinate landholders, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right as sovereigns, of being the guardians and protectors of every class of persons living under our Government."

Harington, II, pp 191-2.

44. These extracts abundantly prove that the Government of 1790 and 1792 meant to reserve to itself its proper authority to protect the ryots from oppression; and that the particular forms of oppression which it had in view were arbitrary eviction and arbitrary increase of rent, though attention was mainly directed to the mode of enhancement usual at the time, which consisted in the addition of *abwabs* or cesses to the revenue then about to be changed by the Permanent Settlement into the so-called rental of the zamindars. The proclamation made in obedience to the orders of the Court of Directors is contained in Article VII forming section 8 of Regulation I of 1793, by which the Permanent Settlement was effected. The Article is thus expressed:

Declaration in 1793.

"To prevent any misconstruction of the foregoing articles" (fixing the Government revenue for ever) "the Governor General in Council thinks it necessary to make the following

declarations to the zamindars, independent talukdars, and other actual proprietors of land. First, it being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talukdars, ryots, and other cultivators of the soil; and no zamindar, independent talukdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

Subsequent declarations and evidence

15. The above citations seem to establish, beyond doubt, that the ryots, prior to the Permanent Settlement, were entitled to the quiet possession of their lands. This right of occupancy was not rescinded by the Permanent Settlement, and its continuance has frequently been asserted by the Government and by others most capable of forming an opinion on the point. It may freely be admitted that Regulations VII of 1799 and V of 1812 introduced provisions which operated to the detriment of the cultivators. But in 1815 the Bengal Government wrote:—"We consider it as a principle equally applicable to all the Provinces immediately dependant on this Presidency, and we believe we might safely add to the whole of India, that the resident ryots have an established, permanent, hereditary right in the soil which they cultivate, so long as they continue to pay the rent justly demandable from them with punctuality." In 1819 the Court of Directors, after quoting a recommendation of Mr. Colebrooke that, "late as it now is, measures should be taken for the re-establishment of fixed rates, as nearly conformable to the anciently-established ones as may yet be practicable, to regulate distinctly and definitely the relative rights of the landlord and tenantry," unreservedly subscribed to a declaration made by Mr. Sisson of Rangpur, that "the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the zamindar in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him." "It is also," the Court said,

Bengal Revenue letter, dated 7th October 1815 para 9

Revenue letter to Bengal, dated the 15th January 1819, paras 24, 30, 39, 54

"a circumstance which is not to be overlooked, that although so many years have elapsed since the conclusion of (the permanent) settlement, yet no resort has been had to the exercise of the power we then expressly reserved of interfering for the purpose of defining and adjusting the rights of the ryots." "Consequences," the Directors observed, "the most injurious to the rights and interests of individuals have arisen, from describing those with whom the permanent settlement was concluded as the *actual proprietors of the land* This mistake (for such it is now admitted to have been) and the habit which has grown out of it of considering the payments of the ryots as rent instead of revenue, have produced all the evils that might be expected to flow from them. They have introduced much confusion into the whole subject of landed tenures, and have given a specious colour to the pretensions of the zamindars, in acting towards persons of the other classes, as if they, the zamindars, really were, in the ordinary sense of the words, the proprietors of the land, and as if the ryots had no permanent interest but what they derived from them"

Revenue letter to Bengal, dated the 10th November 1824, para 33

In 1824 the Directors, addressing the Government of Bengal, observed: "It is in the highest degree important that your design of adjusting the rights and interests of the ryots in the villages, as perfectly in the Lower as in the Upper Provinces, should be carried into effect" For numerous other quotations and references we may invite Your Lordship's attention to the Notes of Messrs. Mackenzie and O'Kinealy, at pages 389—398 and 418—454 of Volume II of the Report of the Rent Commission (second edition). We will conclude here with an extract from the evidence of Mr. Holt Mackenzie before the Select Committee on the affairs of the East India Company in 1832. After distinguishing the class of ryots usually residing in a different village from that to which the land belonged, he observed that the more general tenure in Bengal was that of cultivators possessing a fixed right of occupancy in the fields cultivated by them, or at their charge and risk, whom he would call proprietors of the fields to which the right attached; and he thus characterised the nature of their right:—

"They may be generally described as cultivators possessing a fixed hereditary right of occupancy in the fields cultivated by them, or at their risk and charge; their tenure being independent of any known contract, originating probably in the mere act of settlement and tillage, and the engagement between them and the zamindar or (in the absence of a middleman) the Government officer, serving, when any formal engagements are interchanged, not to create the holding, but to define the amount to be paid on account of it They cannot justly be ousted so long as they pay the amount of value demandable from them, that being

determined according to local usage, sometimes by fixed money-rates or rates varying with the quality of the land or the nature of the crop grown, sometimes by the actual delivery of a fixed share of the grain produce, sometimes by an estimate and valuation of the same, sometimes by other rules, and what they do so pay is in all cases regarded as the Government revenue or rent, whether assigned to an individual or not, in none depending on the mere will and pleasure of another. There are varieties of right and obligation which one could fully explain only by a reference to individual cases; but this is my general conception of the rights of the class whom I should consider the proprietors of the fields they occupy. In Bengal Proper they are usually called *khudkásht* ryots (*i.e.*, ryots cultivating their own), and by this class of persons I believe the greatest part of the lands in that Province is occupied."

Mr. Holt Mackenzie feared that generally the protection afforded to these ryots was very insufficient.

Conclusions of this Government

46. Looking to all this and much other evidence, we may express our general concurrence in the opinions offered by the Lieutenant-Governor of Bengal, the Rent Law Commission, and, we may add, the Famine Commissioners, as to the ancient rights of the Bengal ryots. Indeterminate though those rights were, they at least included the right of occupancy conditional upon the payment of the established rate of rent and the privilege of having that rate fixed by public authority. Under the Mogul Government the land tax was collected by farmers or contractors or Rajas, sometimes mere nominees of the ruler of the day, sometimes possessing pre-existent rights of various kinds. The British Government converted this intermediate class into the zamindars of the Permanent Settlement and changed the land tax of the Moguls into the rents of the zamindari estates. But the zamindars, though termed "actual proprietors" of the land, were not absolute proprietors as against the ryots. The latter possessed substantial rights which, at the time of the Permanent Settlement, though not then ascertained and defined were saved in express terms; and the Government of 1793 reserved to itself the power (of which, indeed, nothing could deprive the legislature) to ascertain and settle those rights at any future time when it might deem it expedient so to do.

Circumstances which obscured the rights of the ryots.

47. The misapplication of English ideas, the misuse of language borrowed from English law and the English rural system, and the enactment of laws designed to facilitate the collection of rents or to secure to auction-purchasers the means of meeting the Government revenue, were amongst the influences which tended to obliterate in practice the rights that the Government had promised to maintain. Nor did the Government always set an example of forbearance in administering estates in its own hands. Nevertheless, it is, in our opinion, clear that up to the date of the passing of Act X of 1859 the resident or *khudkásht* ryots at any rate were fully entitled to claim at least what the Lieutenant-Governor now proposes to give them.

Rights of the ryots in 1859

48. From the Statement of Objects and Reasons of Act X, dated the 10th October 1857, it is manifest that the drafter of the Act, Mr. E. Currie, merely intended to re-enact, in a concise and distinct form, the provisions of the then existing law relating to certain matters which included the rights of the ryots with respect to the occupancy of land and to the adjustment of rates of rent. He held that the Regulations recognised "the right of all resident ryots to the occupancy of the lands cultivated by them, so long" as they paid "the established rent;" and he provided in his original draft, that *all ryots* and cultivators of land (other than hereditary ryots holding at fixed rates) were entitled to receive *pottahs* according to the rates of rent for the time being established in the *pergunnah* in which the land was situated, or if there were no known and recognised *pergunnah* rates, then according to the customary rates payable for land of a similar description in the places adjacent. The rule recognising the occupancy right of all resident ryots was not to apply to *khámár*, *nij-jot*, or *sír* land belonging to the proprietor of the estate or tenure, and leased for a term or year by year to a resident cultivator, nor (as in regard to the actual cultivator) to lands sub-let to a resident cultivator by a ryot having a right of occupancy. These conclusions of Mr. Currie as to the rights of the ryots at the time when the legislation of 1859 was about to be undertaken have now been affirmed by several members of the Rent Commission, after subjecting the question, in its legal and historical aspect, to close and learned scrutiny.

Mackenzie, Field, II, 384.
O'Kinealy, II, 442; Mackenzie, II, 398, 474 5

49. But Act X as passed departed from the language of Mr E. Currie's Bill. The members of the Committee did not deny that all ryots, not holding at fixed rates, were under the then existing law entitled to *pottahs* "at *pergunnah* rates." But they explained that objection had been raised to this expression on the ground that there were really no known *pergunnah* rates. They observed :—

Reasons for the frame of Act X of 1859, as regards rates

"The recognition of a right of occupancy in the ryot implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right. There was a discussion on this subject between the Government of the North-Western Provinces, the Sadr Court, and Board of Revenue, and it was then apparently admitted that it was the acknowledged right of the ryot to hold at 'customary and fair' rates. We have adopted similar phrases, and in this section and in sections 17 and 18 have endeavoured to lay down rules by which the 'fairness' of the rate may be ascertained."

It would seem, therefore, that the grounds on which alone the rents of occupancy ryots may be enhanced, as declared in the present law, were intended to provide a substitute for the old *pergunnah* rates which had fallen into desuetude. The old rates being unascertainable, fair and equitable rates, as defined in the Act, were to take their place.

50. The reasons for the introduction of the twelve-years' rule were thus explained by the Select Committee :—

The same, as regards the twelve-years' rule

"The laws in force speak of '*khudkásht* ryots' as possessing rights of occupancy, and in some places the word *khudkásht* seems to be considered synonymous with *resident* Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy; and it appears that after much enquiry it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with the general practice and recognised right, that a holding of the same land for twelve years should be considered to give a right of the occupancy. We have followed this precedent and altered the section accordingly"

We have referred to the papers from the Board of Revenue in the North-Western Provinces which were before the Select Committee when this passage was written, and we feel no doubt that the intention of the twelve-years' rule was to maintain the then existing rights of the great majority of the settled cultivators. We have, indeed, the statements of the authors of Act X to show that they meant to include amongst ryots entitled to the occupancy right some who would not, technically speaking, come under the designation *khudkásht*; and it is certain that in providing for the future accrual of the right, they opened to ryots, who had not previously enjoyed security of tenure, the prospect of attaining it in course of time.

51. To the case of the non-resident ryots we shall return below. Here we would point out that the changes which have passed over the face of the country in the Lower Provinces have made it difficult for the original resident ryot to vindicate his ancient rights. In many cases the residential village and the lands belonging to it have ceased to be the property of a single landlord, and have, under the operation of the Partition Laws, become divided among several estates. The landlords as a class will only recognise as resident ryots, ryots actually living on the 'estate'; for in the decay or disappearance of the communal village, it is the estate which has become the new unit of property But as regards all ryots possessed of customary rights it is now settled that Act X was intended to be an additional, and not an exclusive, enactment, and that nothing in its terms was meant to interfere with their status It has, however, come to be regarded as a complete code in itself, and the effect of the statutory definition of the occupancy ryot embodied in it has been to injure seriously the ancient rights of the *khudkásht* ryots, by putting them to proof of their having held for twelve years not merely in the village and the village lands or even in the estate, but in every one of the particular fields or plots in respect of which they claim to have rights of occupancy. The consequence is that landlords are able to break down the pre-existing rights of their ryots, which can now only be established, if at all, by means of the twelve-years' prescription; and this it is, unfortunately, in the landlord's power to interrupt. Moreover, section 7 of the Act gives validity to contracts in defeat of the accrual of occupancy rights, and is being utilised to divest the villagers of the old privileges attaching to their status.

Resident ryots

52. The Famine Commissioners observe in their report: "One of the most prevalent forms of oppression on the part of the landlords is their habit of breaking up the holdings of their tenants, and compelling them to change the fields they cultivate, with a view to the destruction of occupancy rights, or rendering them indistinct where they exist, and preventing the accrual in the case of tenants-at-will." We have reason to believe that practices of this kind do, in fact, prevail in many parts of India. In the North-Western Provinces during the year 1878-79, the increase in the number of notices of ejectment was marked in every division and in every district, and the Board of Revenue observed that the proprietary classes had exhibited a very general anxiety to prevent tenants and lessees from acquiring occupancy rights. In the following year the Commissioner of Allahabad reported, "as the twelfth year of occupation approaches, notices are invariably served." "Landlords," said the Board, "are, naturally enough, anxious to prevent the growth of occupancy tenures, and the Local Rent Act virtually points out to them the easiest way of effecting this object, *viz.*, by ejecting tenants-at-will before the twelve years' occupation, which creates a right of occupancy, is completed." The efforts of the proprietors to extinguish occupancy rights have been frequently noticed in reports from the Central Provinces. In 1874-75 the Deputy Commissioner of Jabalpur had "seen many instances where the *malguzars* are carefully causing their tenants to give up the land they have held for 11 years, in order to prevent their acquiring occupancy rights." The Deputy Commissioner of Seoni stated that the absolute occupancy and Act X occupancy holders were being slowly but surely ousted by the *malguzars*. In 1875-76 systematic attempts to prevent tenants from acquiring rights under Act X appear to have occurred in the Jabalpur District. In 1877-78 the Chief Commissioner wrote:—"There is no doubt a general cause at work which is calculated to produce a gradual increase in the number of suits for ejectment, *viz.*, the desire of *malguzars* to prevent the accrual of occupancy rights which leads them, as the end of the 12 years period since the settlement approaches, to take more and more active steps to eject those tenants who would otherwise, by continued occupation, pass out of the class of mere tenants-at-will." The Deputy Commissioner of Saugor, in 1878-79, speaking of occupancy tenants and occupancy rights, said: "There is a strong animus against these tenants among all the *malguzars* of this district, and (as in other districts) they use their best efforts to oust every tenant who has succeeded in acquiring those rights, and do their best to prevent any such further acquisition, by applying to the Court to issue notices of ejectment on all tenants who have held for nearly the prescribed time." In the report, however, for the year 1879-80, the Chief Commissioner observed: "The eventual result of a twelve years' occupancy rule, or an occupancy rule laying down any fixed period for the accrual of occupancy right, must ordinarily be to cause a disturbance of possession in order to check the growth of a class of privileged ryots. Any such rule is disastrous to the well-being of the cultivating class wherever there is a struggle for land. In these Provinces, in most districts, there is no such struggle, and as a fact the occupancy right is allowed to accrue in a large number of cases."

Practices by which the protective intention of Act X of 1859 is defeated:—
In the North-Western Provinces.

Report of Famine Commission, Part II page 119, para. 27.

Board's Report, page 28.

Ibid, 179-80, pp. 26-27.

In the Central Provinces.

Annual Report, page 40.

Ibid.

Annual Report, page 47.

Annual Report, page 29.

Annual Report, page 20,

Annual Report, page 24,

53. In Behar, it is said that not one quarter per cent. of the ryots hold pottahs; and "an examination of the *jamabandi* papers (rent rolls) of Behar estates has shown that while 60 per cent. of the present ryots have held some land in the villages in which they reside for more than 12 years, less than one per cent. of them hold at present the same area of land which they held 12 years ago. Inasmuch as these ryots hold no *pottahs* or other documents showing which are the particular fields which they have held for more than 12 years, and which fields were subsequently acquired, it is doubtful whether any of them could, under the existing law, prove their occupancy rights even where these rights exist beyond all doubt." The Collector of Patna reports that whenever the zamindar has felt himself strong enough to break occupancy holdings, he has done so; and that the landlords are very active in shifting the tenants from time to time to prevent the acquisition of occupancy rights. The zamindars of Shahabad, at

In Behar.

II, 248. 251.

Metcalfe, III, 705-6.

III 729. a meeting held on 30th October 1880 at Arrah, deprecated the concession to resident ryots of rights of occupancy in lands held by them for three years. "At present," the zamindars said, "land-owners prevent the growth of occupancy rights by granting leases for five years only, or by changing the lands, or by managing so that a ryot shall never hold at the same rent for twelve years. In practice, the last expedient is found sufficient, as the Courts find claims to occupancy rights not proved, unless the ryot can show that he held the same land for twelve years by proving that he paid the same rent. Under the proposed law, the zamindars would not suffer ryots to remain for three years" "Interchange of lands," observes the Officiating Collector of Saran, Mr McDonnell, "between ryots in a zamindari occasionally occurs, but it is the rare exception, not the rule. Manipulation by the *patwaris* of the village *jamabandis* to prevent identification of the plot held this year with the same plot held five years ago, is of usual occurrence to prevent proof of continuous holding, and to furnish evidence of the contrary, as well as of a change in the rates." The Maharaja of Darbhanga informed Mr. Reynolds that his present practice was to give leases for ten years, and if the ryot showed himself a good tenant, to renew his lease, and allow him to acquire a right of occupancy, but that if the term were reduced to three years, he would be obliged to eject all his tenants at the end of two years, so as to bar the acquisition of the right.

II, 737

IV, 382.

III, 477 54. In Bengal Proper, the Commissioner of the Chittagong Division states that most landlords have been taking precautions against allowing their ryots to obtain occupancy rights. A petition from the cultivators of the Attia Sub-division of the Mymensingh District alleges that the zamindars are busy sending their dependents and club-men about from village to village to take leases for limited periods from ryots likely to be entitled to rights of occupancy under the provisions of the draft Bill of the Rent Commission. The Collector of Purneah asserts that it is the practice in many districts to take *kabuliyats* from ryots for fixed terms, which are renewed or not at the pleasure of the landlord, and that, in this way, the accrual of the right of occupancy has been prevented. The Collector of Dacca reports:—"At present, as long as they (the ryots) pay their rent, they are not in much danger of having their tenancy interfered with, unless the landlord is anxious to prevent their acquiring a right of occupancy." The Collector of Faridpur has heard that a large landlord of that district has issued, in anticipation of the enactment of the Bill of the Commission, hundreds of temporary leases for the purpose of preventing the acquisition of rights of occupancy under the new law. Your Lordship will have noticed that the Pubna disturbances originated in a case in which the landlord had attempted to obtain agreements from the tenants, admitting that he might eject them on displeasure Mr. Wace, the Officiating Collector of Birbhum, is of opinion that the tendency of the Bill of the Commission would be to foster the execution of formal leases and to make the insertion of a clause barring the growth of a right of occupancy even more common than it now is. "There are doubtless many ryots," says Mr. Reynolds, "who have been induced to execute contracts which specify no term of years, but which provide that the right of occupancy shall not accrue, and that the lands shall be surrendered to the zamindar on his demand." The Commissioner of Chota Nagpur refers to the disturbance of rights by extraneous and unauthorised action on the part of the land-owners and to attempts made to deprive the tenant of the privileges which are admittedly vested in ryots who have held land for 12 years. Mr Nolan, a Collector who is said by the Lieutenant-Governor to know both Bengal and Behar, believes that occupancy rights are being very rapidly extinguished, especially in Eastern Bengal. Mr. O'Kinealy remarks that twice in the course of the last 70 years have great attempts been made to treat the ryots of Bengal as tenants-at-will and to reduce them to the position of the *pakhasht* ryots of the North-Western Provinces—first, after 1812, when the zamindars, admitting that they could not eject, sought to attain their object by claiming a right to enhance at discretion; and secondly, at the present time, when, though unable to enhance at discretion, they are seeking the same end by dispossession after notice. Mr. Reynolds holds that it is now the avowed object of the zamindars to restrict and destroy the right of occupancy

In Bengal Proper

III, 555

III, 592.

III, 608

III, 609.

III, 632

IV, 254

III, 681

III, 715

II, 441

III, 1004

Consequent necessity for an amendment of the law producing wide effects

55. Plainly an Act intended to affirm the then existing occupancy rights of the great mass of the settled cultivators is being deliberately defeated in practice; partly by the assumption, now usually impossible to controvert by judicial proof, that such rights did not exist antecedently to that Act, but were meant to accrue under its provisions; and partly by legal or illegal measures taken by the zamindars under colour of the law and in consequence of that assumption to prevent the accrual of such rights. Whether the fields be changed or evidence be manufactured in the zamindari accounts, or written renunciations of permanent right be extorted from the ignorance or weakness of the peasantry, the object is one which is opposed to public policy. Even if no more decisive step were advisable, it would, we think, be imperatively necessary to provide that shifting occupancy within the same village or estate shall count as continuous occupancy; and to declare, as is proposed in the Bill of the Lieutenant-Governor, that no contract shall in any case debar a ryot from acquiring the occupancy right. But such provisions would have wide consequences. If the estimate of the Behar Committee may be generally accepted, they would affect not less than 60 per cent. of the ryots in Behar; nor can it be doubted that the avoidance of past contracts debarring the acquisition of the right would have, in Bengal Proper, an extensive operation. In these circumstances, as a change involving very far-reaching effects seems inevitable, we think that a complete remedy is more expedient than any partial reform, which, however unavoidable, would have to encounter equally strong opposition.

Failure of Act X of 1859 in respect to enhancement.

56. Before we pass on to discuss more particularly the remedies recommended respectively by the Lieutenant-Governor of Bengal and by ourselves, we would add some brief remarks to what we have already said in regard to the failure of the present law of enhancement. It is not necessary for us to express any opinion on the question, debated at length in the papers, whether before 1859 the zamindars were generally entitled to enhance the rents of the ryots. Practically they did enhance the rents, though they had no legal claim to raise them with any direct reference to the increasing value of the produce. The practice of enhancement was sanctioned by the legislature, the admission being simultaneously made that the old *pergunnah* rates were undiscoverable; and whether or no the authors of the Settlement of 1793 intended that the rates of rent should be permanently fixed equally with the amount of the land revenue, it is not now proposed by any one to withdraw the legal right of enhancement which has been conferred upon the zamindars. On the contrary, we desire to provide for the adequate enjoyment of that right, which, as is notorious, cannot be effectively exercised under the present law. We need not dwell on the circumstances which have led to this result. The rule of proportion laid down in the case of *Thakurâni Dâsi*, viz., that where the enhancement is claimed on the ground of the increase in the value of the produce, the enhanced rent shall be calculated so as to bear to the previous rent the same proportion that the increased gross value of the produce bears to the previous value, has miscarried in practice, because it has thrown upon the Courts of Justice the duty of conducting economic investigations of extreme difficulty. The first term in the proportion is the former gross value of the produce at the time when the rent was previously fixed. Not only may that time be remote and hard to prove, but even if it be ascertained, it may well be impracticable to show the amount and value of the produce at that period. One proprietor is said to have spent a lakh of rupees in enhancement litigation without much practical result, before the inutility of the present law had been demonstrated. The zamindars now seldom, if ever, attempt to work the rule of proportion in their own interests. In fact, the British Indian Association states that the rule has been shown by experience to be unworkable; and this conclusion is accepted by the Bengal Government and by ourselves.

Digest, 242.

III, 991.

Method of recognising ryots' rights proposed by the Lieutenant-Governor.

57. We come now to state our own specific proposals; and here we shall follow the course indicated in the third paragraph of this despatch. Although we shall allude to the terms of the Lieutenant-Governor's Bill, in order both to make our meaning clear and to prevent future misapprehension or

oversight, we shall not put forward amendments in any technical form, but shall merely explain what in our opinion ought to form part of the substance of the measure. With this remark, we would invite Your Lordship's attention to section 19 of the Lieutenant-Governor's draft, and to the definition of *ryot* in section 3. The definition has been framed so as to exclude under-ryots or persons to whom the ordinary village ryots have sub-let their lands and persons of the *korfa* or *bhág-jotdar* class, that is, the lowest class of occupants, below the ryots, cultivating usually on a *metayer* tenancy. It is then declared that every resident ryot has a right of occupancy in any land which he as a tenant holds or as a tenant occupies and cultivates, paying rent for the same, whether such land be held or occupied under a lease or otherwise. From this rule are excepted the private lands (known as *khámár*, *nij-jot*, or *sír*) of the proprietor, when held immediately under the latter for a term or year by year. Next comes an attempt to determine by legislative definition what ryots shall be deemed to be resident ryots. "A resident ryot," it is said, "is a ryot who has his fixed habitation in the village within which he holds or cultivates land as a tenant, or who has held and paid rent for the lands in respect of which a right of occupancy is claimed by him for three successive years or more, provided that such lands lie within a distance of not more than two miles of his fixed habitation." A ryot is said to acquire a fixed habitation by residing within the same village for three years or more; and the village is to be the area shown within the village boundary on the revenue survey maps. The Lieutenant-Governor's proposal amounts in fact to the creation of an artificial village, residence and cultivation within the boundaries of which shall entitle all settled ryots to rights of occupancy in their lands. The proposal is supported by the argument that the spirit of the old rule which postulated residence within the communal village is best preserved by fixing a limit of distance from the ryot's house; and a departure from the strict and universal observance of that rule certainly is not inconsistent with the principle of Act X of 1859, which has admitted many non-resident ryots to rights of occupancy.

Comments on the above.

58. But in considering this proposal as worded in the Bill, it must be recognised that many of the zamindars will utilise to the utmost extent any opportunity of annihilating the claims of the ryots which may be afforded by the law. The above definition of a "resident ryot" would make it the interest of the zamindars that no ryot should hold land in the village where he had his fixed habitation. It would be an advantage to the zamindar to arrange that the village lands should be cultivated, as much as possible, by outsiders, and a disadvantage to him if any ryot were suffered, by three years' residence, to acquire a fixed habitation in any village. Further, in the case of outsiders or persons holding or cultivating land in villages where they did not reside, it would be the interest of the zamindar, both that their places of residence should be more than two miles from their fields and that none of them should hold the same lands for three years in succession. We fully admit the absurdity of supposing that zamindars could cause the great majority of their cultivators continually to shift about from one village or even from one set of fields to another. Nevertheless we think that it is contrary to public policy that the zamindar should find it to his benefit to oust his ryots or any of them either from house or lands. We would take every precaution in our power to prevent the extinction of the occupancy right by disturbance of possession; and we apprehend that in course of time, individual ryots might become unable to prove their rights under the operation of the Lieutenant-Governor's proposal. It appears to us inexpedient to attempt to create any artificial village in the manner proposed in the Bill, and it has been pressed upon us that in any case the two-mile radius is altogether insufficient to cover the area round their houses within which settled ryots carry on permanent cultivation.

No middle course can secure the rights of resident ryots.

59. In these circumstances, it is incumbent upon us to make some alternative proposal; for we entirely concur in the opinion of the Lieutenant-Governor that the substantive law touching the occupancy right must be amended so as to prevent the old and unquestioned privileges of the ryots remaining in jeopardy and being, in many cases, broken down. We have considered numerous recommendations framed on the principle that the insecurity existing under the present law should be corrected without proceeding to the length

of establishing fixity of tenure as the right of all classes of ryots, those only being excepted whose cultivation is of a temporary kind. Our conclusion is that no middle course is compatible with the attainment of our chief object. The occupancy right must be made the general, nearly the universal, rule, if existing privileges are to be effectively maintained. The suggestions before us either obviously fall short of the requirements of the case or virtually amount to the general recognition of occupancy rights in behalf both of resident ryots and others.

Resident and non-resident ryots.

60. Sir Ashley Eden has, indeed, remarked on the present occasion that the extension of occupancy rights to non-resident ryots, which was effected by Act X of 1859, was opposed to the custom of Bengal. No doubt this view is, strictly speaking, correct, if by the occupancy right be meant the particular set of privileges which constitute it under the present law. It has, however, been urged with considerable force of argument that there existed in Bengal no such broad line of demarcation between 'resident' and 'non-resident' ryots as was to be found in Upper India, where the village communities still held together in more or less identifiable form; and it is stated that very erroneous conceptions of the rights of ryots in Bengal have been made current and been perpetuated by the loose way in which the terms *khudkásht* and *paikásht* are employed at the present day in common parlance and even in official documents, the general impression being that the classes referred to were entirely distinct from one another, and possessed of very different rights. In fact (so it is argued by those who support these views), though some communal rights may survive in Behar, throughout Bengal generally the disintegration of the village communities had become complete long before the time of the Permanent Settlement; in many parts of Eastern Bengal there is good reason for believing that they never really existed; the demand of Government revenue was in every part of the Lower Provinces distributed down to the individual ryot; and but few traces are to be found of anything like lump village assessments. Accordingly the resident ryots of a Bengal village (where villages existed) had no common interest in all the village fields; but held each his own plots, paying to the Government representative, and after the permanent settlement to the zamindar landlord, rent at the established *pergunnah* rates. The *paikáshts* or non-resident ryots, where they were not, as an inducement to settle and cultivate, paying actually lower rates, paid precisely the same *pergunnah* rates. Neither class could be forced to pay more than the *pergunnah* rate of rent (Regulation IV of 1794, section 5). Both, it is believed, were protected against arbitrary eviction. Both therefore enjoyed practically all the benefits usually attaching to an occupancy tenure, though in legal phraseology the occupancy right continued to belong only to the 'resident' ryot strictly so called, and he only was specifically protected against a purchaser at a sale for arrears of revenue. This protection against an auction purchaser was in fact the only distinctive privilege which the Bengal Regulations conferred on the *khudkásht* ryot. The auction purchaser was at liberty to cancel any agreement made by his predecessor with a *paikásht* ryot; but if he elected to allow such ryot to remain on the land, he could demand from him only the pergunnah rates of rent (Regulation XI of 1822, Sections 30, 32 and 33). It is thus concluded that in the matter of rent rates and protection from arbitrary eviction, all ryots were on a par. Further, it is pointed out, that if it is decided to maintain any distinction between resident and non-resident ryots as such, the legislature must face the difficulties of definition. Residence cannot be referred to the village in the old sense, for that no longer exists, or has never existed, in the shape which the definition must pre-suppose. Nor can it be referred to the estate, for the residential village has been often split up and divided between several estates. The fact, it is said, is that the terms 'resident' and 'non-resident' have been used in Bengal without any attempt being made to ascertain what their true legal and practical value is; and where, as is generally the case, lands are let at one and the same rate to all classes of applicants, nominal distinctions of this kind must necessarily have tended to lose force.

IV, 10.

Mackenzie, II, 382, 383, 384, 391, 398, 395.

O'Kinealy, II, 430 434, 440, 441, 442 *et passim.*

O'Kinealy, II, 439, *et seq.*

Different schemes for distribution of occupancy rights.

61. The learning and ability with which these arguments have been advanced render it undesirable for us to pass them over in silence. Nevertheless we do not base our

proposals upon them because they cover, as we are well aware, much debateable ground. What we seek is a thorough remedy for a practical evil; we aim at a determination of the case which shall be broadly just to interests which must, at some points, conflict. With this object we have examined the various schemes which different authorities have supported; and we shall here briefly notice the chief of them in succession.

I, 48-9, 129—131

(1) The Rent Law Commissioners proposed, in the fourth chapter of their Bill, to institute a new class of ryots, *viz.*, those who had held land for three or more but less than twelve years. The idea apparently was to discourage eviction by the requirement of compensation for disturbance and other expedients, so that the landlords might suffer the ryots of three years' standing and upwards to hold on till time should ripen their tenure into an occupancy right. This attempt to devise a novel status, entirely unknown either to law or custom in Bengal, met with absolutely no support and has been completely abandoned.

IV, 259
Report of Famine Commission Part II, page 119, para. 27.

(2) The Famine Commissioners have suggested another compromise. They would "declare that all tenants who have been resident and have cultivated land in the village for twelve years and upwards are entitled to occupancy right in their land," and would "restrict the exceptions to this rule to the cases in which the landlord can show that a tenancy on a different footing has been expressly created by act of parties." Under this proposal, the practice of pressing the cultivators to deliver written resignations of their rights would be maintained; and it would be the interest of the zamindars, not merely, as at present, to disturb or appear to disturb the ryots in the possession of particular fields, but further to evict them from both house and lands, turning them out of their ancestral villages.

(3) Another plan, starting from the same point of departure, would avoid some difficulties only to encounter others of almost equal extent. Contracts debarring the acquisition of the occupancy right being avoided, the Bill might accord such right to every ryot who had held, for the twelve years next before the passing of the law, any land either in one and the same village, or under one and the same landlord. It would not suffice to limit the right to those who had held in the same *estate*, for the estate might include only a part of a particular village or villages; and thus the old right flowing from village residence would in some instances be lost. Here, if all rights could be recorded within a few months or even a few years of the passing of the Bill, the consequence would be that the occupancy right would be assured to almost every ryot in Bengal. But the process of recording rights would take time to accomplish. The twelve years' rule, therefore, as thus proposed to be modified, would have to be made prospective as well as retrospective in effect. Wherever it was prospective, zamindars could combine to bring in ryots residing on neighbouring estates to carry on the cultivation; they could, to speak plainly, exchange their ryots, so that none could prove a period of twelve years' cultivation either under the same landlord or in the same village. If, on the other hand, the rule were not to be a prospective one, the lapse of time would increase the difficulty of proving continuous occupancy before the passing of the Bill; and in thirty or forty years ryots who held no decree or public record declaring their status would probably be no better able to prove their rights than they are now.

(4) All the above proposals lay the right open to greater or less probabilities of defeat by taking as a test a sharply-drawn limit of time. The objection applies with special force to the idea that the right should simply depend on a three years' instead of on a twelve years' prescription. If that principle were adopted, cases would occur in which ryots would not be suffered to remain in possession even for that short period.

I, 2

(5) Acknowledging the risk of a limit of time, some would rely upon a classification of ryots; and reverting to the principle of the Lieutenant-Governor's Bill would try to find some fresh method of determining who are to be considered the resident ryots entitled to rights of occupancy. On the understanding that a system of village records and field surveys will be introduced in Bengal (as we shall recommend below), it has been proposed to leave the term "resident ryot" undefined in the law; and it is urged that the officers making the local inquiries could readily ascertain, and register the names of, the right

Beames, III, 832

people. This idea defers the difficulty without solving it. The investigating officers would need the guidance of some principle upon which to proceed; and the principle would have to depend upon residence or prescription or upon both. It will take many years to prepare the village records. The officers would endeavour to record the rights of *khudkasht* ryots; and when they reached the last districts many years hence, there might be few *khudkasht* ryots left whose rights they could record.

(6) The language of the late Mr. Justice Norman—declaring that any ryot who can prove an intention of remaining at his place of settlement, and who has been recognised as a fixed resident of the locality, shall be presumed to be a resident ryot—seems defective, because it throws the burden of proof upon the ryot, who would have to produce evidence of his recognition as a resident. Nor does it escape the consequence that ryots might be compelled to change their abodes. II, 473.

(7) There is an apparent adherence to tradition in the suggestion that every ryot shall be presumed to be a resident ryot in the absence of proof to the contrary. But for all practical purposes it would be preferable that the presumption should be made conclusive at once. A provision to correct the effect of actual or supposed change of fields within the estate or village would be indispensable. A zamindar seeking to prove that any ryot was not entitled to a right of occupancy would have to rely upon custom; and a custom is "a succession of instances from whose constant recurrence a rule is inferred." The zamindar would therefore be required to show that ryots of the same class had been habitually evicted in the same neighbourhood, not from particular fields or holdings, but from the village or estate. Probably no zamindars could do this at the present time. In the future, the harsh landlords would be encouraged to resort habitually to eviction. Sir Henry Maine Punjab Tenancy Blue Book, page 357.

(8) Lastly, it has been proposed to define a "resident ryot" as a "ryot who, in pursuance of an intention of residing for not less than three years, has his sole or principal residence in the village within which he holds or cultivates *ryotti* land or at some place within five miles of the *ryotti* land in respect of which a right of occupancy is claimed by him," adding that "in the absence of proof to the contrary, a ryot's principal residence shall be deemed to be the place at which his family ordinarily resides." This definition abandoning, as it does, all necessary reference either to any real or artificial village or to the estate, really rests upon an arbitrary limit of distance. Without raising any objection to it on this ground, we may point out that the limit of distance is so wide as practically to include all ryots. None would be excluded by this definition except mere temporary sojourners.

We could mention other schemes which have occupied our attention, but it is needless to prolong the list. Of those above enumerated the first, second, and fourth would certainly fail; the third, fifth, and sixth would operate very unevenly; and the seventh and eighth practically ignore the distinctions which they purport to maintain. The occupation necessary to give a prescriptive title can be interrupted or, in course of time, may become difficult to prove. If the class of residents be determined by a short limit of distance from the cultivation, interference can be exercised so that the fields shall be tilled by peasants from more distant homes. If the distance be increased so as to avoid this evil, the distinction between residents and non-residents disappears.

The right of occupancy should be attached to all ryotti land.

62. This being so, we think it useless to cast about for any further expedients of the kind above discussed. It seems impossible to distinguish, in any practical manner, between resident and non-resident ryots without endangering the rights of the original villagers. We prefer simply to take the land as the basis of the occupancy right and to declare that all ryots holding or cultivating *ryotti* land shall have a right of occupancy therein. The occupancy right would then attach to all *ryotti* land without exception, that is to say, to all land that is not *khamar* or private land. II, 439. III, 750-51. IV, 382

Certain cultivators and others excluded from rights of occupancy.

This plan is doubtless a comprehensive one; but to confound it with the indiscriminate grant of occupancy rights to all classes of cultivators would involve very serious mistake. The right would not be conferred upon the under-ryots,—the *karfas* and *bhag-jotdars*, who would, as already said, be excluded by the definition of ryot. It is stated that there are flitting tenants

in Purneah, Dinajpur, North Rajshahye, and South-West Bogra, who come from a distance, rent land for a season or a couple of years, and then resign their holdings and take their departure. No rights of occupancy should be conferred on semi-nomadic tenants of this description. But whilst, on the one hand, we thus acknowledge that many actual cultivators of the soil can now make no claim to a permanent tenure, on the other hand we desire to keep the land, as much as possible, in the possession of the cultivating class. For these purposes some limit of distance might be useful, but it would have no reference to village residence. Whilst, therefore, declaring in general terms that every ryot has a right of occupancy in any *ryotti* land which he holds or occupies, we would except from this declaration persons living at a considerable distance from the land claimed. The exact limit of distance which would exclude the nomad tenants would be a matter of detail to be settled by the legislature; it should be wide enough to include all settled ryots. In parts of the country where special measures were needed to prevent the occupancy holdings from passing into the hands of absentees who have ceased to be, or never were, peasants, and of townsmen, money-lenders, and the like, taking no part in tillage, and living at a distance on the rents derived from the labour of sub-lessees, we would prohibit, in express language, the acquisition of the right by those who are not agriculturists. We shall return to this point below when discussing the questions of sub-letting and transfer.

Non-resident ryots

63. Before, however, we leave the present subject, we would add, that apart from every argument hitherto mentioned, the occupancy right, so far as this involves fixity of rent rates and protection from eviction, must be recognised as belonging to, or be now conferred upon, the non-resident ryots who have not already been promoted to the occupancy status by the twelve years' rule, unless, on the present full consideration of the subject, the decision be that they shall be deprived of rights to which they were, on the best construction of the law, entitled up to 1859. We should regret such a decision as being highly inexpedient: for we desire to protect all ryots from rack-renting, and no such protection can be permanently afforded without security of tenure. If a right of occupancy implies limitation of rent, the converse is equally true; a title to a beneficial rent implies a right of occupancy. A claim to an easy rent is worthless if it can be met by the threat of eviction. Now it has been established beyond doubt, as we think, in the present discussions, that under old law and custom, the non-resident ryots could not be required to pay more than the *pergannah* or customary rates. When the application of those rates resulted in a rack-rent, this was of no advantage to them. Ordinarily they would have paid less than the *pergannah* rates, or they would have resigned their fields. But wherever, owing to the extension of cultivation, the rise in price, or other causes, the application of the *pergannah* rates resulted, not in a rack-rent, but in conditions of beneficial occupancy, the old customary privilege, as to rates of rent, enjoyed equally by the non-resident ryot and others, acquired a substantial value. This would be the worst possible reason for depriving the non-resident ryot of what, when it had no value, he was entitled to claim. Obviously, he must now lose the privilege for ever, unless we accord him fixity of tenure.

Khamar lands

64. As regards the landlord's *khamar*, or private, lands, we would generalise the provisions of Section 83, now applicable only in Behar, and in the case of similar lands there known as *zerat*. No one should be deprived of any occupancy right acquired in such lands before the commencement of the new law; but for the future such lands should be at the disposal of the zamindars free from all rights of occupancy. Precautions would, however, have to be taken to prevent landlords from unduly extending their private lands and converting into *khamar* land, land that either is, or might become, *ryotti*.

Proposed re-establishment of pergannah rates

65. We pass now to the incidents of the right of occupancy. The most important incident would be the privilege of paying rents according to the Collector's table of rates. We have supported the proposal to re-establish *pergannah* rates, suited to present necessities, for the reason, amongst many others, that it harmonises well with the old customs of the country. In illustration of this view we may refer

to the well-known vernacular expression for "breaking the rates," implying an authoritative fixity in the rates which ought not to be impaired; to the whole system of illegal cesses or *abwabs*, those extraneous additional payments kept separate from the rent which are voluntarily made by the people in preference to submitting to alterations in the rent rates; and to a singular survival in the Gaya District where *sikmi* lands, though subjected to *abwabs*, are held at a fixed rent, such lands being the only lands in that district for which rent was paid in money at the time of the Permanent Settlement. But the best illustration is that Tables of Rates have actually been prepared, and with good results, in some districts of Bengal. In the despatch of the 15th January 1819 the Court of Directors (after observing in the passage already cited that the power of intervention expressly reserved at the time of the Permanent Settlement had not been used) proceeded to say :— III, 710-11.

"We conclude that the supposed difficulty or impracticability of the operation was the cause of this non-interference. We find, however, that antecedently to the permanent settlement this power was successfully exercised in several parts of the territory under your Government, and that the advantages of this policy are still felt in those districts, although the general system of your Revenue and Judicial administration has been unfavourable to the preservation and improvement of the advantages thus obtained. We particularly allude to the 24-Pergunnahs and to part of Dinajpur, when it was under the management of the late Mr. Hatch. In the vicinity of Calcutta also, 'the ryots,' as Mr. Colebrooke understood, 'have been supported, by the decision of Adawluts, in their pretensions to hold their lands upon the rents payable by them, or by the person whose representatives they are, according to the best general measurement which was undertaken by the authority of Government before the permanent settlement, and of which the record is understood to be preserved in the office of the Collector.' It is also stated by Mr. Colebrooke that 'the Regulations of Benares have maintained the table of rates of Fusily 1157, and that the canoongoe office yet exists in that province for its preservation' Mr. Sisson, in the Report to which we have already referred, adverting to the measures that had been adopted, in 1788, in Dinajpur, states that Mr. Hatch ascertained by a local investigation, *1st*, the several varieties of rate and pottah, and the proportion at which the illegal cess was made, in the several estates, to bear to the recorded rental; *2ndly*, by actual measurement, 'the extent of cultivation in each pergunnah;' *3rdly*, that he reduced 'the qualities of land in each pergunnah to a certain number of classes, which might readily be distinguished one from the other;' *4thly*, that he ascertained 'the average gross produce of each class;' and *5thly*, that he determined, 'reference being had to the present and former rates of rent, what proportion of the average produce should, in each class, be retained by the ryot, and what proportion of a fixed money valuation should be received by the zamindar.'"

Right of ryots to protection.

66. Mr. Holt Mackenzie, in his evidence of 1832, mentions that the essential rights of the tenantry had been preserved by such proceedings in the immediate neighbourhood of Calcutta, and that rates, leaving tenures of value to the ryots, had been maintained in Dinajpur. Mr. Westmacott, who is well acquainted with that district, reports, writing on the 30th April 1881, that a universal respect is still paid to the *pergunnah* rate as determined by Mr. Hatch in 1790. We concur in Mr. Westmacott's remark that, although at the time of the permanent settlement it was clearly laid down what the Government was to receive from the zamindar, there was, almost universally, an omission to perform the other half of the work and to declare what was to be paid by the ryot. Such a declaration was made by Mr. Hatch in Dinajpur and, perhaps, by a few other Collectors elsewhere; as a rule, it was neglected, and thus, whilst we protected the zamindar against ourselves by fixing the payment to be made by him in perpetuity, we gave the ryot no adequate protection against the zamindar. Late as it is, we propose now and henceforward to afford the ryot this protection, which is justly his due. We would cause authoritative Tables of Rates to be declared on the passing of the present measure, a step which ought to have been taken ninety years ago. II, 97. III, 911.

Character of the operations intended

67. The work of preparing such Tables could only extend gradually to the different districts; some years would elapse before the Tables were completed in all parts of Bengal Proper and Behar; and the operations would very nearly amount to a settlement of rents for tracts of country. According to the Lieutenant-Governor's present intention the rates would be thus ascertained or revised by Collectors of districts with the help of assessors. We do not enter here upon the question of the best agency for such a purpose; it will suffice, on this occasion, to say, that while we think there may

be reason to question whether the Lieutenant-Governor has fully estimated the extent and character of the work, he would doubtless wish to employ the most efficient agency which could be secured without incommensurate cost. The settlement would not include the determination of the rental of each field as is proposed by the Famine Commission. It would be limited to the authoritative declaration of the rates of rent equitably payable by occupancy ryots for recognised classes of land; and to an authoritative estimate of the average value of the gross produce required for the purpose of fixing a limit to the rents of other ryots.

Objects of the grounds of, and positive checks on, enhancement.

68. In this view, the grounds of enhancement laid down in section 23, and the positive checks on enhancement prescribed in section 24, are intended to serve three distinct purposes; *viz.*, first, to govern enhancement suits in the Civil Courts, pending the publication of the Table of Rates for the tract or district; secondly, to declare the principles upon which the officers charged with the preparation of Tables of Rates shall proceed; and, thirdly, to guide the decisions of the Courts in some particulars after the Tables shall have been completed and approved.

Temporary operation of sections 23 and 24.

69. We think these several objects should be distinguished in the Bill with greater perspicuity. Sections 23 and 24, in so far as they will have a merely temporary operation, do not appear to us to call for much discussion. Where the enhancement is claimed upon the first ground, namely, that the rate of rent paid by the ryot is below the prevailing rate paid by the same class of ryots for land of a similar description and with similar advantages in the vicinity, the substitution of the expression "in the vicinity" for the words of the present law, "in the places adjacent," may make the prevailing rate rather easier to prove. Where the landlord relies upon an increase in the productive powers of the land or in the price of produce, the provision that the former period with which comparison is to be made shall be either the time when the rent was fixed or any subsequent time, will, by admitting the second alternative, facilitate the proof required in enhancement suits. But neither section 23 nor section 24 is free from the objection that the Civil Courts will, for a time, be obliged to undertake economic inquiries for which they are not well fitted. We should not anticipate that the zamindars would attempt to make any considerable use of these sections until the further measures in contemplation had been carried out; and we admit that if no other means were to be provided for effecting legitimate enhancements of rent, the landlords might reasonably contend that the legislature was offering them slight, if any, advantage. We desire, however, to shorten, as much as possible, the interval during which no authoritative Tables of Rates will be in existence; and we have therefore suggested to the Bengal Government that the preparation of such Tables shall be begun forthwith. The needful executive investigations can be made without any change in the law; and there would be a very appreciable gain if the rates were ready for declaration in any localities, as soon as the Bill had been passed.

Consequences of publishing a Table of Rates.

70. When such a Table had been published under the new law, the zamindars and ryots could privately adjust their rents upon the basis of the Collector's assessment; or, if they failed to agree, the zamindar could bring a suit in the Civil Court, but only upon two grounds, *viz.*—

First, that the rate of rent paid by the ryot was below the rate declared by the Table to be payable for land of a similar class; and

Secondly, that the quantity of land held by the ryot had been shown by measurement to be greater than the quantity for which rent had been previously paid by him.

The second case is not, strictly speaking, a case of enhancement, but of the application of approved rates to the area correctly ascertained to be subject to them. Broadly, after the Table of Rates had once been sanctioned, the zamindar (except where certain improvements, as we shall presently explain, might be effected) could only enhance his rents by enforcing the authoritative rates. The Collector's Table would itself declare the prevailing rates; and in the rectification of such rates (which is intended), any increase in the productive powers of the land or in prices would be taken into account. The first, third,

and fourth grounds of enhancement, as set out in section 23, would therefore be superseded.

Proceedings to enforce the Collector's rates in the Civil Courts.

71. The Civil Court would be bound to apply the Collector's rates, unless the ryot could prove that he was entitled by custom or contract, or special equitable considerations, to hold at lower or more favourable rates. It is not provided in section 133 of the Bill that the Table shall contain particulars as to the rates payable by different classes of occupancy ryots. In Bengal such classes would rarely be recognised or numerous; but where they were so, it would be an advantage if the Table could include this detail. In other cases, it might be left to judicial inquiry. The ryot would always have the opportunity of showing, under section 142, that he was the descendant of a first settler or of a holder at the time of the Permanent Settlement, or any like circumstance, which might entitle him to some customary deduction. Similarly, if he could prove that his field was, from any special cause, below the average of the class of land in which it would fall under the ordinary application of the Table, he would be entitled on this ground, to an equitable reduction of the rate assigned to such class in the assessment. Either zamindar or ryot could plead that the productive powers of the holding had been increased solely at his expense; and in such case the Court would apply the appropriate rates, which would be specified in the Table. The Court would further see that no rent was more than doubled; unless, indeed, the suit were brought on the second of the grounds mentioned in the preceding paragraph; the reasons for this exception being, in the case of alluvion, that the rent-paying area would be proportionately increased, and, in the case of unauthorised cultivation of excess lands, that encroachments should not be rewarded. If immediate payment of the enhanced rent would be attended with hardship, the Court would have discretion to direct that the rent should increase yearly by degrees for any number of years, not exceeding five, until the limit of the enhancement allowed had been reached.

Procedure in framing principles of assessment.

72. The rule laid down in section 134 of the Bill that in the preparation of the Table of Rates the Collector shall be guided by the provisions of the Act, and by such rules as the Board of Revenue shall prescribe in that behalf, seems to us to need amplification. Virtually, the Board of Revenue is required to frame principles of assessment in accordance with sections 23 and 24. We would impose this duty upon the Board in express terms; but we would add that the rules drawn up by that authority shall before issue be submitted to the Local Government and sanctioned by the Governor General in Council. The experience of other provinces might thus be brought to the aid of the Local Government in the extensive undertaking which is before it. Much skill and attention would be needed to render these rules at once consistent with the law proposed to be enacted, and sufficiently simple to admit of their practical application without unusual difficulty. The Courts of Justice should not have power to question the accuracy of the rules so framed.

Act XXXIII of 1871, sec. 9; Act XIX of 1873, sec. 39; Act XVII of 1876, sec. 15; Act V of 1879, sec. 214 (d); Act XVIII of 1881, sec. 47.

Sections 23 and 24 considered as declaring principles of assessment.

73. Coming now to consider sections 23 and 24 as declaring the principles on which the Tables of Rates are to be prepared, we observe that the rates may be raised in consequence of an increase in the productive powers of the land or of a rise in price. In both cases, it would be necessary to exercise much care in choosing the date of the former condition of the land or of prices, with which the present condition of either would be compared. Manifestly, an intermediate decline of prices or in the productive powers of the land, at some time subsequent to that when the rent was fixed, might make the increase in either appear much greater than it really had been, and this to the serious disadvantage of the ryot. In the converse case the zamindar also might suffer. The point of time must therefore be fairly chosen with regard to the interests of both parties, as is intended by the Bill. Doubtless, in the interval before the Tables of Rates were brought into force, the Courts of Justice will not overlook the importance of this matter.

Choice of point of time for comparison.

The Table of Rates should meet certain cases of improvement

74. It would be difficult, but not, we think, impossible, for the Table of Rates to be so adjusted as to meet cases in which improvements were effected solely by the landlord or solely by the tenant. Some estimate would be made of the total additional value due to the improvement in prices or productive powers, and such total value would be assigned wholly to the landlord or shared equally between him and the tenant, according to circumstances. In the case of lands or prices improved by the zamindar, the whole additional value (subject to certain limitations) would be added to the rates; where neither zamindar nor ryot had brought about the improvement, not more than half such value would be so added. Land improved by the ryot at his sole charge, would be rated as unimproved land.

No excess over double the rent or a quarter of the produce.

75. To the rules that the enhanced rent shall not be more than double the previous rent or more than one-fourth of the average annual value of the gross produce of staple crops, we take no exception. We do not think that either rule would be found to press hardly on improving landlords. The first is a reasonable application of the principle that the general standard of comfort must not be harshly lowered by any sudden and great change in the means of the cultivating classes. Most of the cases in which it might work unfairly to the zamindars are eliminated by reason of its being inoperative where the enhancement is claimed on the ground specified in clause (2) of section 23; and we observe that the British Indian Association does not object to it. In framing the rates, its effect would be that no rates more than double the old rates, would be proposed. The limit to 25 per cent. of the gross produce of the staple crops is advocated because it corresponds to the *rebba* or money rental, taken by the Government of the Moguls, and because, one-half being the usual share of the landlord when the rent is taken in kind, one-fourth appears to be a fair proportion when the risk is borne by the tenant. If it were intended that all rents should be adjusted to a produce standard, the theoretic considerations in favour of adopting some share of the net produce as the measure of rent could not be disregarded. But the case differs where the standard sought is not a measure of rent in every instance, but a maximum which no rent shall exceed. In this view a comparatively rough and ready rule seems expedient; and that some such rule is needed the experience of Behar places beyond all doubt. Just as in the Punjab the land revenue assessment is limited to the equivalent of one-sixth of the gross produce, so in Bengal it is proposed that the rental shall not exceed the equivalent of one-fourth. Either in the Punjab or in Bengal, under the Bill, the revenue or rent, as the case may be, might be fixed at any amount less than the authorised share of the gross produce, if circumstances required a more lenient assessment. We think the limit of 25 per cent. would be useful to the assessing officers in Bengal; and after the rates had been announced, it would be self-acting, because every rate for every class of soil having been calculated on the principle that the rate should not represent, at the most more than one-fourth of the average annual value of the gross produce of the staple crops, it follows that the total assessment on any holding composed of soils of different classes could not exceed a fourth of the average annual value of the gross produce of the staple crops which might be cultivated on the soils therein comprised.

Rule of proportion.

76. We feel hesitation about the proposal that the enhanced rent shall not bear a higher proportion to the rent previously paid than the increased productive powers or increased prices bear respectively to the former productive powers or former prices. Where the increase is not the result of the enterprise of the landlord, such a rule may be very fair. We do not object to it as a temporary provision, in anticipation of the Table of Rates; and in the assessments, we think it might be reasonably followed in those cases where the alteration of prices or productive capacity of the soil was due to no effort on the part of the landlord. But, to take a concrete example, if the gross produce be of the value of Rs. 100 and the rent Rs. 25, and the landlord makes an improvement

which raises the value of the produce to Rs. 150, he cannot, under the rule of proportion, add more than Rs. 12-8 to his rent, though, if he were allowed the full benefit of his improvement, the addition would be Rs 50. Improvements would therefore be discouraged; and we would avoid such a defect in the law by making it clear that neither the Courts nor the assessing officers need apply the rule of proportion, if, for any reason, it might appear inequitable to do so. After the rates had been announced we do not think that the Courts should be troubled with any rule of proportion. The prohibition against more than doubling the rent, and the limit of a quarter produce would be ample securities against rack-renting; and it would be an unnecessary refinement to require the Courts to enter on questions of proportion which would already have been considered, so far as they ought to be taken into view, when the Collectors' Tables were under preparation.

Progressive rates

77 In connection with the power of the Court to direct a gradual rise in rent for the purpose of preventing hardship, it might be worth while to consider whether the Table of Rates should not provide for progressive enhancements of another character, to meet the case of lands newly brought under cultivation, so that landlords should be encouraged to promote the extension of tillage by the prospect of a higher rate after a certain term. A Smith, III, 676.

Limitations of time

78. Up to this point, we have discussed the limitations upon the amount of any enhancement. We now have to remark on the period of time during which the ryot should be free from any further increase of rent. It is intended that the Table of Rates shall have effect for ten years from the date of its publication, and thereafter until a fresh set of rates has been notified. In our opinion ten years would usually be too short a term for the currency of the sub-settlement, especially in long-inhabited and fully cultivated tracts; and if there were no serious objection, we should greatly prefer the period of thirty years recommended by the Famine Commission. But where rents are at present nominal or exceedingly light, and more particularly where they have been kept low to further reclamation, landlords might justly complain, if, after only doubling such rents now, they were debarred from further enhancement for so long a time as thirty years. Moreover, experience of settlement operations in other provinces has shown that the length of the term of settlement may very properly vary with the different circumstances of particular tracts. We would therefore propose that the Local Government shall be empowered to fix the term during which the Table of Rates shall be maintained, provided that such term shall not be less than ten or more than thirty years. We think also that a landlord, when he has enhanced the rent of an occupancy tenant, whether through the Courts or otherwise, should not be able, merely on the ground of the issue of a fresh Table of Rates, to claim a further enhancement, until at any rate *a reasonable period* has elapsed since his last enhancement. The precise mode of applying limitation to such claims would be matter for the consideration of the legislature.

Principle as to improvements

79. These limitations of time might discourage the investment of capital in agricultural improvement, but we would add provisions to prevent their having this effect. It may be quite true that in Bengal, at the present day, improvements are rarely made either by landlord or tenant; but it is a distinct object of our policy to encourage them; and when we are about to put the law of landlord and tenant in Bengal on what we hope may be a permanent footing, we desire, at least, to be very careful to do nothing which may tend to check them. We have borne this principle in mind in discussing the limits of amount imposed upon enhancement.

Improvements effected by the landlord with the tenant's consent

80. We will suppose the case of a landlord who wishes to lay out Rs. 5,000 for five years in making wells, raising embankments, excavating irrigation cuts, or other similar works, expecting at the same time to receive a reasonable return for the capital so expended. Under the proposals above described, as he could only enhance once in ten, or it might be in thirty years, he must either wait till he has expended the whole of the Rs. 25,000, and thus lose the interest upon the sums first laid out; or, if he enhances upon the first year's expenditure, forego all

return to his subsequent outlay until after the lapse of ten or more years. Occupancy ryots cannot be allowed to contract themselves out of the legal rates of rent, and thus by multiplying instances of rates above the average, gradually to raise the prevailing rate of the vicinity. To permit them to do so, would lead to collusion between zamindars and individual ryots, and, in course of time, to the prevalence of oppressive rates of rent. But it is desirable to avoid discouraging improvements in cases such as that supposed. Landlords will divert their money to more profitable employment, if they cannot obtain a reasonable return from its investment in their estates. We would therefore enact that whenever a landlord desires to make an improvement of any of the descriptions specified in section 69, he may apply to the Collector for permission to realise as rent a fair rate of interest upon the capital so to be laid out; and that the Collector, if he is satisfied, after hearing the landlord and tenant or their representatives, that the application of the landlord has been made in good faith, and that the tenant or, where more than one tenant is affected, the majority of the tenants consent to the proposed improvement, and to the rate or amount of interest claimed by the landlord, shall make an order, specifying the amount of interest to be added to the rent, which amount shall be recoverable as rent from such date as the Collector may direct, notwithstanding the currency of any legal term within which enhancement is or may become prohibited in respect to the holding or holdings about to be improved. Provisos would be added that no such amount shall be taken into calculation by any Court, Collector, or local or district commission when ascertaining the prevailing rate for the purpose of any suit or of framing a Table of Rates under the orders of the Local Government; and that any such amount shall be set off in the tenant's favour if the landlord shall bring any suit for enhancement of rent on the ground of an increase in the productive powers of the land.

Joint improvements.

81. There is another special case, distinguishable from the above, for which no provision has been made in the Bill; and that is where the productive powers of the land have been increased at the joint expense of landlord and tenant. Such instances would be rare, and though the Tables would specify rates for irrigated or manured or newly-cleared lands, they obviously could not be adjusted to meet the equities of joint expenditure, which could only be ascertained by inquiry into the particulars and history of the holding. This inquiry we would leave to the Courts, even after the Table was published, subject to the rule that the additional value due to the improvement shall be divided between the parties in proportion to their shares in the expenditure by which the improvement was brought about. We make this suggestion much more in pursuance of the principle that there should be no discouragement to joint agricultural improvement, than under any belief that, in practice, the case will often arise. Still, if the parties should ever agree to prosecute joint improvements, each should be assured of an equitable return.

Applications for a complete settlement to be allowed

82. Although the Collector's assessment would not ordinarily extend to each field, we think that permission might be given to zamindars who own estates of considerable size or to any sufficient number of ryots, to apply to the Government, either before or after the preparation of a Table of Rates, for a complete settlement of their rents, including maps of the fields and the ascertainment of the amounts payable in respect of each holding. It should be in the discretion of the Government to decline to allow its officers to enter upon such work if for any reason, it was inexpedient to do so; and it should be an invariable condition that the persons, seeking to procure any such settlement by public agency, should defray the whole of the cost.

Enhancement should not be forbidden to temporary lessees in Behar

83 Before leaving the subject of enhancement we would remark upon section 84 (applicable only to Behar), which forbids enhancement by temporary lessees. We admit the gravity of the evils which that section is intended to alleviate; and we have duly weighed the representation of the Behar officers (as reported by Mr. Reynolds) that enhancement
IV, 378 by *thikadars* must be prohibited at any cost. We are aware that a planter

may use the practice or the threat of enhancement as the lever to force the reluctant cultivation of indigo; and that speculators, paying down lump sums to landlords who prefer the profit and ease of such transactions to the worry of a direct contest with their ryots, may unscrupulously exert the authority thus purchased to induce compliance with repeated illegal demands. But we are opposed to class legislation which would deprive a particular set of persons in Behar of rights generally enjoyed by landlords throughout the country. Our object is to prevent rack-renting in any case; and deeming the rules of the Bill sufficient for this purpose,—so far, at least, as rack-renting is effected through the Courts,—we would strike out section 84, which, at most, could only preclude the *thikadár* from claiming enhancements in due course of law. It is, however, notorious that the *thikadárs* usually procure enhancements without the direct assistance of the law Courts. If our general recommendations are accepted, the ryots will be placed in a much more independent position than heretofore; and *thikadári*, in so far as it is part of the indigo system, will be to some extent discouraged, because greater facilities will exist for direct relations between the ryots and the planters, and the inducements which lead the latter to purchase zamindari influence will lose some part of their force.

General description of proposed amendments

84. We do not think it necessary to specify in detail the amendments which should be made in the Bill to meet our views, as explained in the preceding paragraphs. On the whole, we believe that the only important difference of opinion between ourselves and the Bengal Government is that we would take a classification of lands instead of the status of the tenant as the basis on which the recognition of the occupancy right shall be effected, and would make that recognition general in order that it may be perfectly secure. Following up this proposal as to *ryotti* lands, we would slightly modify the Bill in regard to *khámár* or private lands. We think the Local Government should be empowered to fix the term, during which the Table of Rates shall be maintained, at not less than ten or more than thirty years. It would be an advantage if the law were more clearly to distinguish the different purposes and circumstances for and under which sections 23 and 24 will be brought into play; and if it were to state more explicitly the consequences of publishing a Table of Rates. The rules of assessment, framed by the Board of Revenue, should, we consider, be submitted for our sanction; and we have made some fresh suggestions in regard to the rule of proportion and progressive rates. We would add a clause giving a ten years' currency to any enhancement obtained before a Table of Rates can be enforced; and we would guard this and every other restriction of time by enabling landlords to obtain a fair interest on capital laid out in improving their properties. We would provide for the cases of joint improvement; and of landlords or tenants desiring to obtain complete settlements at their own cost. Section 84, prohibiting enhancement by temporary lessees, we would omit. It is not, however, our present duty to submit a revised Bill. We confine ourselves to formulating our recommendations on the understanding that, if they are approved, effect will be given to them in the next draft of the measure.

Avoidance of contract a necessity.

85. Nor need we dwell on section 20 of the Bill, which provides that no contract, whether entered into before or after the commencement of the enactment, shall in any case debar a ryot from acquiring a right of occupancy in *ryotti* lands used for agricultural purposes. Such is the power of the zamindars; so numerous and effective are the means possessed by most of them for inducing the ryots to accept agreements which if history, custom, and expediency be regarded are wrongful and contrary to good policy; that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed: and in this conclusion we have the support, not only of the Bengal Government, but also of the almost unanimous opinions of the Bengal officers.

Incidents of the occupancy right

86. After the claim to hold at the legal rent, the most important incidents proposed to be annexed to the occupancy right are transferability and the power of sub-letting. We shall confine our remarks to transfers which may be the consequence of

default in the payment of rent, or otherwise due to a sale in execution of a decree, or which may be the result of private agreement, taking, in the latter case, the form either of sale or mortgage

87. In section 148 of the Bill it is proposed to empower the Lieutenant-Governor, on the recommendation of the Board of Revenue, to render the *patni* sale procedure applicable to certain occupancy holdings. The effect would be that these holdings could be summarily sold for arrears of rent on the application of the landlord and without decree. Notice of the arrear claimed would be given at the Collector's Court, at the zamindar's place of business, and at the village of the defaulter; and a ryot contesting the demand might apply for a summary investigation within the period of delay, but if the case were still pending, the sale would nevertheless proceed. The responsibility for the service of the notice would rest with the zamindar; and the functions of the Collector would be merely mechanical. The authority to bring occupancy holdings to sale in this manner would be conferred on landlords who maintained a proper system of accounts and registration and duly furnished their tenants with receipts and statements of account. Clearly if the accounts were open to suspicion, or if the zamindar and his dependants could not be trusted honestly to serve the notices which they would profess to prove, this procedure, when applied to ryots' holdings, might work very serious injustice. But, assuming that the Board of Revenue would always be right in its estimate of the accuracy of the accounts and the character of the landlord, we still entertain a strong objection to conferring special powers of coercion upon individual zamindars. The distinction made in favour of the landholders thus authorised summarily to evict their tenants would be highly invidious. The provision has not been locally criticised; and we are glad to perceive that the Lieutenant-Governor, recognising some of the objections to which it is open, has not given it more than a provisional support In effect, it offers a bribe to the zamindars in the shape of exceptional means of coercing their ryots to induce them to maintain regular accounts—a duty which they are already bound to fulfil. For these reasons we are decidedly of opinion that section 148 should be omitted.

Objection to the patni sale procedure

88. Under the Bill, the ordinary process for the recovery of rent would be the modified system of distraint provided for in Chapter XIV. But if the landlord brought a suit for arrears,—and he could sue for a three years' balance, though he could not distrain for rent due for more than one year,—he would be compelled, in the execution of his decree, to proceed at once to the sale of the holding. Sale, we think, is an appropriate substitute for ejectment, because the ryot will receive (under section 233, clause (4)) the balance of the amount realised after satisfaction of the landlord's claims, and thus will obtain the value of his interest, including compensation for any improvements which he may have effected. We have considered the question whether sale should be deferred by transferring the management of the land to the Collector, as can be arranged under the Code of Civil Procedure and as is recommended by the Famine Commission in regard to the small properties of villagers elsewhere. The suggestion seems impracticable because the agency and system of administration existing in Bengal would preclude the possibility of such work being undertaken by the Collectors. With these remarks, we concur in the proposals of the Bengal Government respecting the sale of occupancy holdings in execution of decrees.

Sale in execution of decree.

89. We have already expressed our views on the question of improvements made by landlords; and, in connection with the matter of eviction by means of execution sale, we may here digress to notice the effect of the Bill on the claims of tenants to compensation. Putting aside tenants under written leases for terms certain, tenants are divided into two classes, those with and those without a right of occupancy. Where the occupancy tenant is practically evicted by Court sale, he obtains, as we have shown, the value of his improvements, always supposing that the price realised is the true market price of the land. But under section 21 (*e*) cases may occur in which an occupancy ryot would be ejected for the breach of certain stipulations; and ryots without occupancy rights may be dispossessed by notice to quit served at a particular time of

Compensation for tenants' improvements

year, and followed by a suit for ejectment. Under section 69, all tenants are authorised to make *bonâ fide* improvements of specified kinds without the landlord's consent. But we do not find in the Bill any provisions other than those relating to Court sale, which would secure the tenant compensation for his improvements when he is otherwise dispossessed. We think such provisions should be introduced, and that they should apply to both classes of tenants. Sections 44 to 47 of the North-Western Provinces Rent Act, No. XII of 1881, might be generally followed, so that the compensation should take the form of a payment in money or a rent charged on the land or the grant of a beneficial lease, or any one or more of these forms; and so that the Revenue authorities should be empowered to adjudicate in cases of difference as to the amount or value of the compensation tendered. We would further amend clause (*e*) of section 21 by an adaptation of the language of section 14 of the Conveyancing and Law of Property Act, 1881. On the breach of a stipulation entitling the landlord to eject, he should be required to serve a notice on the ryot specifying the particular breach complained of, and, if the breach were capable of remedy, calling on the ryot to remedy it, and, in any case, to make compensation in money on account of it. The right of ejectment would then be enforceable only if the ryot failed, within a reasonable time after the service of the notice, to remedy the breach, if it could be remedied, or to make reasonable money compensation.

Private sale and mortgage.

90. Returning from this short digression, we come to the subject of transfer by private sale and mortgage. Here our conclusions are that the landlord should have a right of pre-emption in all cases whether of sale or foreclosure; that it is undesirable that the occupancy holdings should pass into the hands of the money-lending classes; and that it would be an advantage if mortgages to such classes could be discouraged or restricted.

The Bill practically gives the landlord a right of pre-emption.

See Act IV of 1872, sections 12 to 15, as amended by Act XII of 1878.

91. The Bill practically confers a right of pre-emption on the landlord, although this is not stated in so many words. Clause (*b*) of section 21 enables the occupancy ryot to transfer his holding by private sale, and states that the consent of the landlord shall not be necessary to the validity of any such transfer. But this clause must be read as though it were subject to a proviso referring to a clause (3) of section 19 and to sections 38 and 41. The intention of the first of these provisions is that after transfer by private sale or sale in execution of a decree, the incoming ryot (if an outsider or non-resident ryot) shall not acquire the occupancy right except with the landlord's consent. Failing such consent, the new tenant would be merely a tenant-at-will or (more correctly) an unprivileged ryot under Chapter IV. Sections 38 and 41, relating both to transfers by one resident ryot to another and to transfers by resident ryots to other ryots not possessing the status of residency, are apparently restricted to transfers other than transfers by sale in execution of a decree, and do not apply to mortgages, because transfers by mortgage are not included in the definition of 'transfer' contained in section 37. The parties to the transaction are obliged to apply for its registration in the Rent Office of the zemindar; and if they do not do so, the latter may treat the transferor as still liable for the rent, at least for a period of six months. On application the zamindar may refuse to register, may pay the vendor the price agreed upon, and may take possession of the holding as unoccupied *ryotti* land. To prevent collusion as to the price fixed for the holding, the landlord is allowed to apply to a Civil Court to determine the reasonable price which should be paid. Under section 46 in certain cases, which would be very numerous, the acceptance of rent from the purchaser is to be deemed to be equivalent to registration; the landlord could therefore ignore the transfer till rent was tendered by the incoming tenant, the right of pre-emption arising when the tender was made.

Landlord's right of pre-emption should be declared in express terms.

92. To the principle of these rules we take no exception. We think that the rights of present settled ryots being maintained, the landlord is fully entitled to choose his tenants in all cases of transfer, and that the right of pre-emption will sufficiently enable him to guard his interests in this respect. But we are of opinion that effect might be given by a more direct method to the intention of the Lieutenant-Governor. We would therefore declare that in all

cases of the transfer of occupancy holdings in *ryotti* land, whether by private sale or by sale in execution of decree, or by foreclosure, the landlord shall have a right of pre-emption; that in cases of private sale or foreclosure he may, if necessary, apply to the Civil Court to fix a fair price, or the amount of the mortgage debt; and that his purchase or redemption shall result in the land being placed at his disposal as unoccupied *ryotti* land.

Transfer its consequences to the ryot

93. So far we have considered the landlord's interest; but the protection of the ryot is a matter of much greater difficulty. The money-lender by means of a mortgage might appropriate the whole profits of the holding; or by foreclosure or purchase he might become possessed of the occupancy right, making a sub-lease to a cultivator; or the occupancy ryot of to-day, finding his interest profitable, might gradually disuse cultivation, sub-letting the land to an under-ryot at an exorbitant rent. In all these cases the actual cultivation of the soil would, unless provision be made to the contrary, tend to fall into the hands of a rack-rented peasantry, the fruit of whose labours might be reaped by speculators or absentees, or mere annuitants, idly consuming the agricultural yield in unproductive expenditure. A generation hence, it may be said, present circumstances will repeat themselves; the present settled ryots will have become, to all intents and purposes, tenure-holders, or they will have parted with their rights in favour of non-agriculturists; and the Government will again be moved to interfere for the protection of new masses of peasant occupants against practical seldom and oppression.

Reservation of power to correct such consequences, if injurious

94. We agree with the Lieutenant-Governor that any general prohibition, either of the mortgage or of the sub-lease of the holding, would be inoperative. We admit, therefore, that some of these consequences cannot be altogether prevented; but we desire to minimise their range and effect. They may be brought about in two different ways; that is, either through the direct transfer of the old holding by sale or mortgage to a non-agriculturist, or, the holding being retained by the original settled ryot or his representative, by the conversion of cultivators and peasants into petty landlords living on their rents. The first process has produced, in many parts of the country, evils against which we would take all possible precaution. That in course of time the second process will be in operation is, we think, no conclusive objection to the principle of the Bill. The probability assumes the passage of the present generation of ryots through a period of prosperity; and the assurance of a position of comfort, if not of industry, to their successors in interest. The Famine Commission, in advocating the extension of occupancy-rights, contemplates the eventual transfer of such rights to the actual cultivator if the original holder becomes divorced from the soil; and considers that the Rent Courts could decide whether an occupancy tenant had ceased to be an habitual cultivator. Whether rights are re-adjusted by the Courts under a special law or by express legislative provision, the principle is the same; and we would merely say now that nothing at present proposed to be enacted will deprive the legislature of its power of interposition to prevent the growth of a pauperised cottier class, if, in future, there is any serious sign of this danger. We would, however, do our best to retard any such development. Should it occur, the terms of section 8 of Regulation I of 1793, already cited, are amply wide enough to support the most effective intervention. Our authority to protect, not only dependent talukdars and ryots, but *all other cultivators of the soil* is unimpeachable; and we would unmistakeably assert that such authority is not exhausted on the present occasion, and that the Government reserves its liberty to repeat, at any future date, measures of protection similar to those which are now proposed.

Expedients for retarding injurious consequences Checks on sub-letting

95. The expedients for retarding the consequences which we desire, as much as possible, to obviate, must necessarily be so devised as to hinder, in some degree, the operation of the principal causes which will produce them; namely, as we have shown above, transfer and sub-letting. In order to discourage sub-letting, the Lieutenant-Governor proposes to lay down in section 71, that no occupancy ryot may sub-let his holding without the consent of the landlord. If, however, such ryot does sub-let without such

consent, the demise will be valid, but the landlord will still be entitled to distrain. By section 30 the money-rent of the under-ryots is limited to 35 per cent. of the average annual value of the gross produce. In most cases the sub-lease would be a customary *melayer* arrangement by which the crop would be shared in equal proportions between the ryot and the under-ryot, known as a *korfa* or *bhag-jotdar*. Here the law would not interfere. The limit of 35 per cent. of the gross produce would be applicable only to money-rents; and until a Table of Rates for occupancy holdings had been prepared it might not always be easy to measure the rent against this standard. We would accept this difficulty as an inevitable and temporary one. We think it worth while to impose such a limit on money-rents, because so far as it was operative, it would tend to preserve the actual cultivators from rack-renting and impoverishment, The Table of Rates, when framed, would specify the amount of the gross produce of the land of each class and the annual value thereof. As the Bill stands, these particulars would only be authoritative in regard to the rents of occupancy ryots. We would extend their application to the rents of *korfas* and *bhag-jotdars* when paid in money. The amount and value of the gross produce declared in the Table of Rates would therefore be conclusive in suits brought to recover money-rents under section 30. The Courts would thus be relieved of the necessity of local investigation, as they would find in the Table of Rates the needful data on which to base their decisions. With this modification we support the Lieutenant-Governor's proposals on the subject of sub-letting by occupancy ryots.

Checks on transfer Proposal of the Lieutenant-Governor.

96. The intention of the Lieutenant-Governor is to allow mortgages, but to restrict permanent transfers of the occupancy right to persons of the ryot class. It is thought that the definition of ryot and the provisions of clause (3) of section 19 will prevent any non-agriculturist, such as a money-lender, from acquiring the occupancy right unless he becomes a ryot. But the definition of ryot includes a person who holds land for the purpose of cultivating it; and a person is said to cultivate land when the cultivation is carried on in different ways, and, amongst others, when it is conducted by persons to whom the ryot has sub-let. It thus appears to us that the money-lender, so far as the definition of ryot is concerned, would be able to acquire the occupancy right without difficulty, and to sub-let the holding to the original resident ryot or to any other cultivator. It is true that under section 19, clause (3), he would have to obtain the landlord's consent to the continuance of the right of occupancy. But this obstacle, though it might reduce the value of what the money-lender could acquire, would not prevent him from ousting the settled ryot.

Proposal of this Government

97. Turning to the evidence and the various proposals made in connection with the transfer of holdings to money-lenders, we find it said in the Report of the Behar Committee (but disputed by some of the Native members) that in Shahabad and other parts of Behar, where occupancy rights are at present transferred by sale, the effect has not been to throw the lands of the ryots into the hands of the *mahajans* or other moneyed men. Nevertheless, a majority of the Committee considered that occupancy rights should not be rendered transferable by sale. The Rent Law Commission proposed to allow sale, but to prohibit mortgage, deeming that this plan would obviate the danger of *mahajans* becoming the owners of occupancy holdings, while the former ryots would remain on the land in a degraded condition of serfage. There is testimony from the Eastern Districts to suggest that in that part of Bengal the risk of the ryot sinking to a state of serfdom is inappreciable. Thus the Commissioner of the Chittagong Division writes: "In Dinajpur and in this Division, in fact, I believe, throughout Eastern Bengal, the ryot who is in need of money does not, as a rule, have recourse to the traditional money-lender, in whose clutches he becomes so involved as to cease to be a free man. On the contrary, help is obtained from some fellow-villagers of substance, and such debts are repaid without reducing the borrower to absolute want." Babu Parbati Churn Roy has, in the course of his duties, seen a great deal of the ryots of Eastern Bengal, and he would impose no restriction on their power of dealing with their rights. Mr. Westmacott believes that the richer ryots generally find capital for their poorer neighbours, and his experi-

Babu Harbans Sahai, II, 286
Babu Joy Prakash Lall, II, 287
II, 253.
Report, para. 32.
Lowis, III, 476.
III, 622 3
III, 906, 910.

ence of the ryots in Northern and Eastern Bengal is that most of them are too prudent to require protection against the money-lender. The general sense of the other opinions seems to be that if the prohibition of mortgage proposed by the Rent Commission were effectual, there would be some hardship to the ryot who, in bad seasons, would be forced to sell his holding outright; while if it were not effectual, it would at least operate to make the ryot's credit worse, and the terms on which he would obtain loans more onerous. Several of the Behar officers and Mr. Reynolds, after his conference at Bankipur, supported the proposal of the Rent Commissioners. On the whole, as in the case of occupancy right, we would here also seek to attain our object by the directest course. Saving all rights already vested, we would enact that no person who is not an agriculturist shall hereafter acquire a right of occupancy in *ryotti* land either by purchase or gift, or devise or foreclosure, or in any other manner whatsoever. The ryot would then be able to transfer freely to other ryots, whether by mortgage or sale. But no mere money-lender could acquire the right, though he could advance money on the security of the crop or of the holding, and might bring the latter to sale, subject to the condition that no one but an agriculturist could purchase it. These provisions would be guarded so as not to interfere with the landlord's right of pre-emption. We advocate them with regret, as restrictions needed in an immature state of society, where the poor and ignorant are apt to fall into the hands of people, possessing the discretion to accumulate property, but unable to resist temptations to exaction. As education and the consequent power of self-protection spread, such exceptional legislation would grow obsolete. We therefore think that the Lieutenant-Governor should be empowered to withdraw the above-mentioned provisions in any district where it might be established to his satisfaction that absolute freedom of transfer would be unattended by any risks. The proposal put forward in this paragraph would be consistent with the suggestions made above for the determination of the class which is to possess the right of occupancy.

Nolan, III, 716. Worsley, III, 731. MacDonnell, III, 738. Reynolds, IV, 384.

Acceptance of Lieutenant-Governor's proposals for the more speedy realisation of certain arrears of rent.

98. The provisions for the more speedy realisation of arrears of rent when the rates are undisputed do not require more than a brief notice. As already mentioned, the Rent Law Commissioners recommended the abolition of distraint, but the reports of the district and divisional officers, and the urgent representations of the zamindars, led to a general concurrence of authoritative opinion that distraint must, in some shape, and at least for the present, be maintained. We accept the principle of Chapter XIV of the Bill that distraint shall be permitted on application to a Civil Court and through the agency of an officer thereby deputed. The details of the procedure will be minutely considered when the Bill has been introduced. At the same time we would express the hope that it will not be necessary to retain permanently this portion of the Bill; and that improved administrative arrangements may eventually enable the Government to offer the zamindars facilities in collecting their rents which shall not involve the distraint of the produce. We concur in the remarks of the Rent Commission as to the general inexpediency of summary methods of judicial investigation; and we think that the abbreviated procedure of Chapter XVIII goes as far as it is prudent to proceed in the way of shortening the trial of certain classes of rent cases. Opinions differ as to the value of the abbreviation effected, which is modelled for the most part on the rules of the Small Cause Courts. Probably the most important point is the provision in section 242 that there shall be no appeal from the decisions of specially empowered officers in suits for arrears of rent when the amount claimed does not exceed Rs. 50. We consider that Chapter XVIII is at least worth a trial. Experience will soon show how far it tends to prevent the undue prolongation of rent suits.

I, 77.

Remissions and suspensions of rent in certain cases.

99. In the opinion of the Famine Commission, when a tenant is sued for an arrear, the Rent Courts ought to be able to decide "whether he is entitled by reason of some calamity of season, such as is recognised in the case of a landlord as a justification for a suspension of land revenue, to have the arrear suspended till the next crop is harvested." Much correspondence has passed between our Government and that of the North-Western Provinces and Oudh on

Report, II, page 119, para 28.

the closely connected question of the interdependence between remissions and suspensions of land revenue and remissions and suspensions of rent. It was originally provided that a remission or suspension of rent should draw with it the obligatory relaxation of the land revenue demand; but finally, the converse rule was enacted in section 23 of Act XII of 1881, under which it is open to the Local Government, where it remits or suspends land revenue, to empower an officer to direct a proportionate remission or suspension of rent in the tract affected by calamity. Remissions and suspensions of land revenue are exceedingly rare in Bengal, but they are sometimes allowed, particularly in the eastern deltaic districts which are exposed to storm-waves and tidal inundations. We would therefore at least provide, on the principle of section 23 of the North-Western Provinces Act, that whenever the land revenue is remitted or suspended in Bengal, either the Rent Court or, if necessary, a special officer, shall have power to remit or suspend the rental in proportion. We fear that if we were to adopt the proposal of the Famine Commission, the Bengal officials would be led into local inquiries which they would not now have the means of conducting with success.

Proposal for a general field survey and record of rights:

Report, Part II, page 121, para. 34.

100. But by far the most important proposals made by the Famine Commission, in connection with the relations of landlord and tenant in Bengal, are that a general field survey shall be undertaken, and that the system of village records and accounts shall be introduced. As we have already implied, we give our general support to these proposals. Where local officers possess a full and accurate knowledge of local facts, and where they are therefore able to pursue a vigorous method of administration, these advantages are very commonly due to their being supplied with information reaching to the detail of every field, and to the existence of numerous and disciplined bodies of subordinate native officials, who are able to collect the various particulars within their cognisance as materials to suggest fairly safe generalisations. With the view of preventing or detecting famine or scarcity, of alleviating distress, and of securing agricultural efficiency, we have pressed upon all Local Governments the institution, or continued improvement, in the several provinces, of local organisations for agricultural inquiry extending, if possible, to all parts of each district. Whether we have regard to the prevention of famine, or to the waste of life or waste of money which may directly result from official ignorance or uncertainty as to the approach of dimensions of famine; whether we look to the need for active administration which shall search out and expose deep-seated evils, or to the lack of some solid assurance that facts affecting agricultural interests shall be so notorious and indisputable that none shall be able to pervert them to the injury of the weak, we perceive, in the circumstances of many portions of Bengal, and particularly of Behar, strong reasons for placing the Bengal officials on a level, in point of administrative advantages, with their brother-officers in other provinces. If it be said that in temporarily-settled territories the Government has a pecuniary interest in an intimate acquaintance with the agricultural resources of the country, which is absent where the revenue has been permanently fixed, we reply that we have an interest, not of a pecuniary kind, but of a more important description, in the well-being of the agricultural population. In urging upon the Local Governments the system of agricultural inquiry recommended by the Famine Commission, our only objects connected with the land revenue assessments were to lessen the expense and vexation of re-settlements and to prevent the hard or uneven pressure of taxation upon the cultivating communities. Our chief desire was, and is, that our officers shall understand the rural economy of their districts, in order that they may be properly equipped for their frequent contests with calamity or wrong. We have been seeking no fiscal advantage but the prevention or diminution of human suffering.

Which would improve local knowledge:

101. Thus the general motives, which would lead to the introduction of systematic agricultural inquiry in parts of India where it is not at present organised, lose little, if any, of their force in Bengal by reason of the Permanent Settlement. There are, however, special circumstances, prominent in the present discussions, which seem to us to render this administrative improvement particularly necessary in

the Lower Provinces. Nowhere are the condition of the tenantry and their relations with the landlords questions of so great complexity; nowhere have they a more important bearing upon the public welfare. The land question, it will be admitted, is the great administrative problem in Bengal. Yet nowhere is the Government at a greater disadvantage in considering it. To introduce a system of village records in such form as may be best suited to the circumstances of Bengal would be to improve local knowledge, and to enable the Collectors more effectively to examine and deal with the various interests and difficulties arising out of the relations of landlord and tenant.

End the uncertainty which promotes rent disputes.

III 611.

102. But the great advantage would be that this system, supplementing the operation of the Bill, would bring to an end the uncertainty which now prevails on all points touching the status and rental of the tenantry. "The withholding of receipts," writes the Collector of Faridpur, "is as nothing compared with the evil attending land being held and leased without any reliable record. Half the murders and riots of Eastern Bengal, if not more, are to be laid to this door, as also the chronic opposition of landlord and tenant." The law has always directed or encouraged the interchange of *pottahs* and *kabuliyats;* but it may often be the interest both of landlord and tenant, and still more of the zamindari *amla* or dependants, that the true facts shall be studiously obscured. The tenant may dislike accepting a document which he might regard as derogating from rights antecedently claimed; both landlord and tenant might prefer indefiniteness as giving either some chance of unjust advantage over the other; if the tenantry not only knew but were able to prove their rights, the power of the *amla*, resting on their means of producing and concocting evidence, would be undermined. Mr. Nolan states:—

III, 914-15

III, 724 25

"I have been struck during the course of my service in different districts in Bengal, Behar, and Orissa by the uniformity of the disputes which everywhere more or less prevail between landlords and tenants. In all the evidence is of the same type; on the one side are produced the zamindari accounts, showing, if they are to be trusted, that the ryots have in fact given their consent by paying at the enhanced rates; on the other are put forward verbal denials and criticisms of the accounts. In some cases the accounts have been proved to have been elaborate forgeries. * * * * The commonest, almost the universal, defence is that the demand for rent is greater than what is due. The landlord supports his plaint by the evidence of men of the lowest character for veracity, and by accounts kept by these men in the loosest fashion. The ryot replies that the witnesses are perjured and the accounts are forged. In many cases within my knowledge it has been clearly proved that the suits brought were supported by accounts fraudulently kept for years, with the intention of proving the rent to be higher than it was in reality, and these cases are typical. This is nowhere more true than in Behar."

Mr. E. Currie, in the Statement of Objects and Reasons annexed to the Bill, which afterwards became Act X of 1859, observed: "To refer a poor cultivator to a regular suit, under the present practice of the Courts, is almost tantamount to refusing him any remedy at all." We much fear that there are parts of Bengal, more especially in Behar, where this remark is still no less true than when it was written; and the reason is that the documentary evidence on which the Court must mainly rely is in the custody of the zamindar's dependants, whose oral testimony, moreover, can rarely be properly checked. The village record system would wrest the evidence on which rent suits depend from the hands of those who are interested in falsifying it.

And efficiently protect the ryots

103. It is not enough to recognise the valuable rights possessed by the ryot. He must also be enabled to prove them. We believe that the Bill would effect much; but, if we are to have the absolute security, which we desire to obtain, that it shall not miss its mark, its intention must be carried out by executive and administrative arrangements in the interior of the districts. Generally to affirm and strengthen the occupancy right will not put an end to the evil of the zamindari accounts; nor will it help individual ryots to establish their claims to particular plots, when those claims are contested. In one paper Mr. Reynolds states that the right of eviction is never exercised in the Eastern Districts; in another he quotes opinions to the effect that exemption from eviction would be a worthless boon in Behar, where ryots are hardly ever evicted, because the new tenant could not possibly pay more than the old one. Yet we gather

III, 1,010.
IV, 377

that, both in the Eastern Districts and in Behar, rent suits of the character described by Mr. Nolan are, or have till lately been, common. The Collector's Tables of Rates will doubtless clear away many difficulties; but if the rates are known, the zamindar's *amla* will alter the measurements, confuse the record or evidence of classes of soil and size of holdings, and by these and other devices, and by continuing the levy of illegal demands, force the ryots to pay more than the legal rent. We have considered the provisions of the Bill regarding registration and rent receipts and statements of account; and we think that all the measures proposed in regard to those matters are insufficient to eradicate the mischief which we desire to destroy. They do not establish an independent agricultural record with which neither zamindar nor zamindari *amla* could tamper. Till that is done, the weaker peasantry will never be safe from oppression.

Bearing of experience in the permanently-settled districts of the North-West Provinces on this proposal.

104. Concurring, then, with Sir Henry Ricketts, Sir George Campbell, the Famine Commission, and other authorities, we are of opinion that the question whether a field survey shall be made and a record of rights framed throughout Bengal should now be taken up in communication with the Local Government. This work will take many years to accomplish, and we think it should be begun in the Patna Division, where the need for protecting the cultivators is most pressing. In the adjoining permanently-settled districts of the North-Western Provinces a cadastral survey and a revision of the record of rights are now in progress. We therefore caused inquiries to be made for the purpose of ascertaining what experience might have been gathered in Ghazipur, Mirzapur, Jaunpur, and Benares, which might assist us in forming conclusions upon the treatment of the rent question in Behar. We enclose the reports which we have received from the Government of the North-Western Provinces. They show that the *patwari* or village accountants' cess was accepted by the proprietors in the permanently-settled districts without objection; that the *patwaris* are on the same footing in the permanently-settled as in the temporarily-settled districts of the North-Western Provinces; that the present operations extend to the record of all rights in land whatsoever; that even an imperfect record of rights may be a source of great strength and stability to the tenants' interests; that the zamindars do not resent the present proceedings or official intervention in village accounts as undue inquisition into their private affairs; and that there is practically no anology between the state of things in Behar (the Shahabad District being excepted) and the state of things in the Gházipur District, where a record of rights has been in existence for 40 years. There is, indeed, quarrelling about boundaries and *sír* lands. But the Collector speaks of the record prepared in 1840-41 as having been "the salvation of the tenants' rights;" and the characteristic evils of Behar, the insecurity of the ryot, the changing of fields or alteration of field records, the excessive enhancement of rents, and the prevalence of *thikadári* and of illegal distraint, are absent. The Gházipur tenant may be litigious; but it does not appear that he is oppressed. All the evils in Behar spring from the weakness of the tenantry; and nothing, not even broad legislative declarations of their occupancy rights, or Collector's assessments of rent rates, will do so much to establish the ryots in a strong position, able to resist aggression, as the independent record of the fields to which each individual is entitled and of the exact amount which he is required to pay annually in respect of them. If Your Lordship sees no objection to the early introduction of a field survey, the formation of a record of rights, and the re-establishment of the system of village records and accounts on a revised footing in the Patna Division, we shall place ourselves in communication with the Government of Bengal with the view of maturing the details of a scheme for these purposes. We may add that a professional cadastral survey would probably be unnecessary, and that some less costly method of measurement conducted after the manner of settlement measurements in parts of Northern India would probably effect all that is required.

Summary of arguments.

105. As this despatch has extended to a considerable length, we may now conveniently summarise our arguments and proposals. Soon after the enactment of the Rent Law of 1859, its working began to be attended by difficulties which the decisions

of the Courts of Justice failed to overcome. From different causes, the relations of landlord and tenant have long been on an unsatisfactory footing in Orissa, Bengal Proper and Behar. Projects of legislation have had a different origin in Behar and Lower Bengal, respectively; but two separate Committees simultaneously represented that the whole law ought to be re-cast. We have accepted this conclusion, and have supported the main principles of Sir Ashley Eden's Bill as being just and expedient in themselves and consistent with the ancient customs of the country and the Regulations of the Permanent Settlement. Further, Act X of 1859, instead of being, as supposed, an exhaustive Act laying down clearly and finally the rights and interests of all classes interested in the land, has now been declared by the High Court not to override or prevent the operation of custom where this is not directly abrogated by it. This being so, the ryots of Bengal may now be held to be in possession of every right that has not been actually taken away from them by our legislation. Under the old Regulations they were entitled to the practical benefits usually attaching to rights of occupancy; and those who are entitled to occupancy rights by custom though they cannot, indeed, prove them under the present law, have not been deprived of them, merely because they were partly conferred upon and partly recognised in a class differently determined by a new statutory definition. It is also the fact that throughout the greater portion of Bengal the custom of the country makes no difference as regards rates of rent between resident and non-resident ryots. Thus in going behind the twelve years' rule, we are not reverting, as some allege, to a state of things which has not existed for eighty or ninety years. On the contrary, we are affirming a state of things admitted to exist in 1859, still, on our interpretation of law and custom, constructively in existence, and, as a matter of fact, now widely obtaining in practice where the mass of the people is prosperous and strong. We are rescuing, in all parts of the country, the class of true occupancy ryots from the false position into which it has been forced by comparatively recent legislation; and we are preventing attempts to contract it under the unexpected operation of a law which was intended both for its benefit and that of a large less privileged class besides. On the other hand, we would maintain the zamindars in the novel right of enhancement with reference to the direct increase in the value of produce which they never had before 1859; and we wish to facilitate the exercise of this right of which, by their own admission, they cannot now effectually avail themselves, owing, again, to defects in the present law.

I, 2. *Supra*, para. 18.

Finally, we think that if the general revision of the law now contemplated is to produce its full effect, it must be followed up by executive measures (desirable also on other grounds), designed to end the uncertainties to which rent disputes are mainly due, and, by the local ascertainment and independent record of subordinate rights, to set the ryots, once for all, beyond the reach of oppression.

Former condition of the ryots.

106. Depending on these arguments, we would nevertheless guard ourselves from the charge that we are ignoring the losses and gains of the better part of a century. Unfortunately, it is only too certain that, for a long series of years, the rights of the ryots were, in practice, diminished or ignored or crushed. Twenty years after the Permanent Settlement it was known that the class of "village proprietors"—the resident ryots of Bengal—was "in a train of annihilation." In 1819 the Court of Directors owned with regret "the absolute subjection of the cultivators of the soil to the discretion of the zamindars." In 1827, the Senior Judge of the Sadr Dewáni Adálat recorded that "in many parts of the country the resident cultivators are the actual slaves of the landholders and liable to be mortgaged, bartered or let to hire, the same as his oxen and his goats, at his will and pleasure." The more cautiously worded evidence of Mr. Holt Mackenzie in 1832 confirms the impression that, except in a few districts, the rights of the ryots had then been reduced to a minimum. In 1841 and 1845 sale laws were enacted which, according to high authority (though the opinion is disputed), gave purchasers power to eject resident ryots whose tenures were created after the Permanent Settlement and to assess them, if not ejected, at discretion. In fact, two principles, antagonistic to the interests of

Lord Moira's Revenue Minute, dated 21st September 1815, paras. 138 to 146.

Revenue letter to Bengal, dated 15th January 1819, paras. 22 ff.

Bengal Revenue Consultations, dated 8th March 1827. II., 397-8.

Trevor, Loch, Bayley, Jackson, Glover J.J., in the Great Rent Case, pages 9 and 15.

the ryots, were frequently at work, operating with varying force at different periods, but each, when it took effect, tending to promote a disregard of the restrictions which law and justice had intended to impose upon superior proprietary power. The principle of non-intervention between zamindar and ryot was by turns asserted or repudiated; but it must unquestionably have fastened on the minds of the local officers, prepared, by the associations of language and training, to accept it withou tdemur. The other principle was that the zamindar must be supported in his demands upon his ryots, because, under the revenue sale laws, his land revenue must be paid on pain of forfeiture of his estate. Thus it was that zamindars became invested with the powers of private distraint and private summons which they notoriously abused; while the officers of the Government, who should rightfully have engaged in the defence of the villagers, were disarmed by an erroneous theory.

Lord Moira's Minute, 1815, para. 189. Letter of Board of Directors, 1819, para. 39. Revenue letter of Bengal Govt., dated 1st Aug. 1822, para. 107. Lord W. Bentinck, 1833,—*vide* III, 689. O'Kinealy II, 450.

Value of Act X of 1859.

107. To this day, where wealth has not been accumulated by the development of trade and where the legislation of 1859 has not penetrated below the surface of society, the ryots are still exposed to many oppressions, such as those which have been reported from Behar. We have no doubt that the state of things still, to some extent, surviving in that province, was, in past times, common in very many parts of Bengal. In the Eastern Districts the position has now been almost reversed by the growing prosperity and enlightenment of the people, by the passing of Act X of 1859, and by the decision in the Great Rent Case; so that there it is rather in behalf of the landlords, who need help to obtain their dues, than of any ryots, requiring protection, that we must again resort to the Legislature. And here we would say, very emphatically, that Act X of 1859, notwithstanding its failure, as we think, in some very material particulars, was a most valuable instalment of reform, and one worthy of the benevolent intentions of its authors. The change, for such it is, which we would expedite and complete, has already been partially accomplished. In 1859 the Government resolved to intervene; and we have no other end in view than to carry the work then begun to an effective conclusion. But in so doing, and in order to preserve the spirit of the present law, we are compelled to modify its substance. If, the twelve-years rule being maintained, shifting occupancy under the same landlord were to be counted as continuous occupancy, then such a provision, if retrospective, would have almost as wide an effect as our proposals; while, if it were prospective, many landlords would combine to prevent the accrual of the contemplated rights, and many ryots, who are now in quiet possession of them, would be ruined. Moreover, experience has shown that the ryots cannot be safely permitted to contract themselves out of their hereditary rights. We are thus brought to propose important amendments. Doubtless the declaration and strengthening, still more the ultimate record, of the rights of the cultivating classes will check the assumption, on the part of the landlords, of absolute proprietary powers. But where powers, which the Government, on the best construction of its proceedings and Regulations, never intended to bestow, have been arbitrarily abused by one class acting against another, justice requires that they shall be more precisely defined and limited. To zamindars who can no longer exercise feudal compulsion over their ryots, the legislation which we have proposed will afford many advantages. Nor will its benefits be limited to them. All the landlords will be confirmed in the right to apply a new principle for the enhancement of rent; and all will be afforded new means for procuring legitimate enhancements.

Summary of proposals.

108. Influenced by these views, we have made the following proposals:—

I.—To restore the great body of the ryots of Bengal to the position which they held under the ancient land law and custom of the country, (paragraphs 38-39):

II.—To effect this restoration by declaring that the occupancy right, carrying with it the privilege of a legal rent, shall attach to all *ryotti* land, and shall be enjoyed by all settled ryots, nomad ryots and under-ryots being excluded (paragraph 62):

III.—To accept the proposals of the Lieutenant-Governor for the re-establishment, rectification and enforcement of the *per-*

gunnah rates, subject to certain modifications (abstracted in paragraph 84), of which the chief relate to the framing of principles of assessment (paragraph 72), to the securing the benefit of improvements to those who make them (paragraphs 76, 77, 79, 80, 81), to avoiding class restrictions in respect to the enhancement of rent (paragraph 83), and to permitting applications in certain cases, for a complete settlement of estates (paragraph 82):

IV.—To empower the Local Government to maintain the Collectors' Tables of Rates for periods extending from ten to thirty years (paragraph 78):

V.—To declare that no contract shall debar a ryot from acquiring a right of occupancy in *ryotti* land (paragraph 85):

VI.—To render the occupancy right transferable, not, indeed, by summary sale without decree (paragraph 87), but by sale in execution of decree (paragraph 88), and private sale (paragraph 90); subject always to the landlord's right of pre-emption (paragraph 92), and, except where the Local Government shall otherwise direct, to the condition that the right shall not be acquired through any form of permanent transfer, including foreclosure, by any one who is not an agriculturist (paragraph 97):

VII.—Except as above, to impose no restriction on the mortgage of the right (paragraphs 90, 94, 96, 97):

VIII.—To secure to occupancy and other ryots due compensation for their improvements (paragraph 89):

IX.—To reserve to the Government the fullest power of interposition to prevent the growth of a pauperised cottier class (paragraph 94):

X.—To discourage sub-letting by certain expedients, of which the most important is a limitation of the amount of rent recoverable from under-ryots (paragraph 95):

XI.—To provide for the more speedy realisation of arrears of rent when the rates are undisputed by a modified method of distraint, and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal (paragraph 98):

XII.—To authorise remissions or suspensions of rent where there has been a remission or suspension of land revenue (paragraph 99):

XIII.—To take up the question of introducing, throughout Bengal, the system of village records and field surveys, commencing with the Patna Division (paragraphs 100—104).

Reasons for an early decision

109. In conclusion, we would express our earnest hope that we may be favoured with Your Lordship's instructions in regard to these important matters at the very earliest date which may be consistent with their due consideration. The evils which we have described are of long standing; many of them are of a very serious kind; some, indeed, produce so much injury and suffering that we think certain measures towards their repression should be taken by the legislature even in anticipation of the passing of the Bill. In a separate despatch we shall explain to Your Lordship the few brief provisions which ought, in our opinion, to be immediately enacted in order to aid the executive administration in putting down illegal exaction and illegal distraint by landlords—provisions which would have a penal character, and would not deal effectively and permanently with the large and pressing questions of the occupancy right and the systematic regulation of enhancement. Those questions, we think, can only be properly settled by the general scheme of reform proposed in this despatch; and until that scheme has produced its full effect on the country, we fear that it will not be possible to avoid the retention of some penal law directly aimed at grave abuses of proprietary power. The obligation to the people of Bengal which was accepted by this Government in 1793, and again in 1859, has never yet been adequately fulfilled; and our anxiety is great to press on the legislation, now almost

matured, which shall effectually discharge it. We are prepared to deal with a question, pending, in point of fact, from the time of the Permanent Settlement, and, at last, owing to the resolute exertions of the Government of Bengal, faced in its full extent and complexity. We earnestly ask Your Lordship to support our resolve that the present opportunity shall not slip by unutilised; and we seek a speedy decision, because, while we know the causes which have prevented earlier action, and fully admit that the Government of India has not till now found itself in a position to enter upon the large reforms which are required, we hold that legislation ought not to be longer deferred.

No. 268, dated Allahabad, the 21st February 1882.

From—J. R. Reid, Esq., *Offg. Secy. to the Govt. of the N.-W. Provinces and Oudh,*

To—*The Secretary to the Govt. of India*, Revenue and Agricultural Department.

In continuation of my letter No. 9A., dated the 10th January last, I am directed to submit, for the information of His Excellency the Governor General in Council, copy of a note by Mr. G. E. Ward, Collector of Jaunpur, on the relations between landlord and tenant in his district.

Note by G. E. Ward, Esq., *Collector of Jaunpur, on the Relations of Landlord and Tenant in the District of Jaunpur,—dated the 16th January 1882.*

I regret much that I have not the leisure to do justice to this subject upon which much might be wirtten. All I can attempt is to give as clear answers as I can to the special questions propounded in paragraph 39 of the memorandum on the rent question in Behar.

Some preliminary description of the district is necessary.

The Jaunpur district comprises an area of 1,566 square miles, and by the last census contains a population of 1,209,613, or 778 to the square mile. The population of the Jaunpur tahsil, in which the city is situated, is 965 to the square mile.

According to the census of 1872, 68·3 per cent. of the whole population were engaged in agriculture. The average area of land cultivated by each male agriculturist was 2·5 acres, the average for the whole province being 4·7. There were found in the district 1,090 houses of the better sort, the average for 33 districts being 12,147.

The soil is naturally poor; kunker is more frequently found and more easily procurable than in any district I have seen. There is no canal irrigation, but except on the high banks of the rivers wells are dug without difficulty. The average rainfall is 40 inches, and there is no record of the rain having ever completely failed. The people are very laborious and the cultivation is high. There are no large villages, but the habitations are spread about all over the land. Thus a very large proportion of the cultivated land is highly manured.

The common people are backward in education, but shrewd and enterprising; they have a great respect for the law, and are consequently litigious; and however poor they may seem to be, they are able to spend large sums in stamps and court-fees.

Jaunpur was the last district settled by Mr. Duncan, and is believed to have been even at that time in a better state of cultivation than the adjacent districts. Thus the incidence of the revenue on the cultivated area is higher than in any other permanently-settled district, and of the temporarily-settled districts which have been lately re-assessed, there are five only,—Fatehpur, Cawnpore, Muttra, Etawah and Aligarh,—in which the incidence is higher.

Thus the incidence in Mirzapur on the cultivated area is Re 1-0-2 the acre; in Ghazipur it is Re. 1-8; in Benares Re. 1-15-2. The average incidence of all the plains districts is Re. 1-10-5. In Jaunpur the incidence is Rs. 2-1-5. Moreover, within the district the incidence is very unequal, ranging from as much as Rs. 10 the acre in one village to as little as Re. 0-3-0 the acre in another.

The value of the zamindari right is estimated on the difference between the rent on the rent-roll and the Government demand for revenue and cesses. The price is generally calculated, so that the purchaser receives from Rs. 4 to 6 per cent. on his money. Purchasers are indeed sometimes content with as little as 3 per cent. if the recorded net profit be correct; but in such instances it is probable that there are sources of profit not recorded.

Among the zamindars there is every variety of landlord to be met with,—rich and poor, resident and non-resident, hereditary and auction-purchasers, owners in severalty and proprietary bodies,—numbering many hundreds.

A very large proportion of the zamindari is owned by non-residents. The Maharajas of Benares and Vizianagram are among these, and of late years several fine estates have been purchased by Benares bankers.

There is also every variety of class and status to be found among the tenants. The people indeed have up to a late date recognised only two classes of tenure, *viz.*, tenants-in-chief and sub-tenants. The zamindars classify their land to this day as *sir* and *kashtkari*. *Sir* is the land which they cultivate themselves, or which is thrown on their hands by the failure or death of any tenant. *Kashtkari* is the land which the tenants occupy. They only are recognised as tenants-in-chief, while the tenants in *sir* land are considered sub-tenants. The

words "maurasi" (hereditary) and "ghair-maurasi" (non-hereditary) have also been used to distinguish the two classes of tenants, but these terms, no doubt, have been supplied by our own system of record The distinction between tenants at fixed rates and tenants with rights-of-occupancy is, I believe, as applied to this district, a creation of our law, and up to the present time no classification of tenants in accordance with the technical definitions of the law had been made It is now found that tenants whose tenant-right notoriously does not date from the settlement, have been allowed to preserve fixity of rent and to mortgage, and even alienate their holdings On the other hand, groups of tenants who undoubtedly date from the permanent settlement are found to have consented to a slight increase in their rent which technically destroys their fixed-rate rights

Owing to the destruction of the records during the mutiny, the classification of fixed-rate tenants, which is now being made, depends a good deal upon chance If all the records since the settlement had been preserved, I think it possible that the number of fixed-rate tenants would be very small On the other hand, probably two-thirds of all the tenants in the district have been subjected to no change in rent for the last twenty years

The condition of the tenants then, up to the time when the technical definitions of recent legislation began to be understood, depended very much on their own qualities and exertions Being as a rule an extremely frugal and hard-working class of people many of them became rich, and the money which they made was generally invested by them in loans to the less successful members of their own order The tenants in this district have never been at the mercy of professional money-lenders, nor hopelessly indebted to their zamindars This is, independently of the general sentiment in favour of prescriptive right, they have always been able and willing to stand a contest for the privileges to which they believed themselves entitled But, as when these contests were decided or compromised, the present classification of tenures was unknown, there is of course a want of uniformity in the result Within certain wide limits the circumstances of almost every village, and the condition of tenants even in the same village, may vary considerably There is, I think, no trace to be found of a prevailing or pargana rate of rent.

The new record-of-right is nearly complete in one tahsil only, and I have had the following statistics abstracted from the new papers —

Statement showing the condition of tenants in Tahsil Machhlishahr, Zilla Jaunpur.

Pargana	Proportion of land held by tenants at fixed rates to total area paying cash rents	Average area held by each tenant at fixed rates	Average rent of fixed rate tenants	Highest average in any village for tenant with fixed rent	Lowest average in any village for tenants at fixed rents	Average rent of other holdings paying cash rents	Total area held by tenants
			Rs A P	Rs A P	Rs A P	Rs A P	
Garwara	62 6 per cent	2 8 acres	4 1 0	8 12 0	0 11 5	5 1 7	55 953 acres
Ghiswa	48 1 "	2 6 "	3 15 2	7 12 3	0 11 7	3 11 10	52 836 "
Mungra	60 3 "	3 3 "	4 1 10	15 0 11	2 0 7	5 3 3	30 938 "
Total	54 8 per cent	2 8 acres	4 0 8	15 0 11	0 11 5	4 7 7	139 727 acres.

It has been impossible within the time to have these statistics fully tested, but they are generally correct, and give a fair idea of the facts They show at any rate what great differences there are in the rates of rent in different localities

I now proceed to institute a comparison between the state of things in this district and that in Behar, as shown in the reports

In the first place, I have to mitigate the notion which has been evidently obtained of the existing records in this district from Mr Moens' letter quoted in paragraph 31 of the memorandum I do not admit that the records are as untrustworthy as Mr Moens stated When that gentleman wrote the letter in question, he had not been in the district more than a few months, and no doubt he would find the records miserably bad and inaccurate, as compared with those of the district he had been in The records that he would see would, of course, be those regarding which cases were brought into his court, that is to say, they would be those in which there was most error In making this deduction from the force of his statement, I do not mean to assert that it was unwarranted, or that his opinion was unsound It was imperatively necessary that there should be a new survey of the district, and that the record should be made anew Still the existing records were sufficient in a rough way for the business of the courts and for the valuation of estates I have never heard of such a thing as a zamindar putting up the lease of his estate to auction, and letting the lease-holder recoup himself from the tenants In giving leases the zamindar makes a deduction of, say, 10 per cent. on the rent-roll for the benefit of the lease-holder A rent-roll is generally delivered with the lease.

It must be remembered too that Mr Moens' remarks apply to records which were made after the mutiny to supply the place of those which had been destroyed Up to the mutiny the people enjoyed the advantage of records, which I believe to have been fairly accurate, which were based at any rate upon accurate records and a professional survey Pottahs have always been very generally given where the tenants did not hold at fixed rates Receipts for rent are generally insisted on by the tenants The patwaris have always been furnished with books, in which to enter payments made in their presence or certified to them No loose sheet would

ever be accepted as a patwari's account. The new survey and record-of-right were completed after the mutiny at a total cost of Rs. 57,831, and it was impossible that they should be perfect. Had the state of things in Mr. Moens' time been permitted to go on, it is very probable that in the course of years the rights of tenants might have been destroyed; but I am not prepared to say that so far the tenants have been at all prejudiced. In fact, I am of opinion that the preparation of the new record will distinctly benefit the zamindars by facilitating the recovery of rents.

The reason why the tenants have not suffered more, is to be found, first, in the comparative prosperity and independence of the tenant class, and, secondly, in the weakness and want of combination of the zamindars.

I have shown how the tenants in this district are, as a body of men, in a fairly prosperous condition. I have also shown that the zamindars, as a body, are disunited since their status is so varied. I have now to give some idea of the divided character of proprietary right, which is a signal peculiarity of this district.

The constitution of the great majority of mahals is what is technically called "zamindari," that is to say, the proprietary body consists of a number of persons who are jointly responsible for the Government revenue, and jointly entitled to the rent. The extent of interest and responsibility of each person is expressed in fractions of a rupee. In other districts there is either a tendency for the land to be divided among the shareholders in proportion to their shares, or some one person is selected from among them as manager, who collects all the rents, pays all the revenue and charges, and is responsible to his co-sharers for a distribution of the profits. Neither of these customs prevail in this district. Each shareholder considers himself entitled to collect from each tenant his share of the rent due from that tenant, and to pay into the tahsil his share of the Government revenue. An attempt was made to abolish this practice by section 106, Act XVIII of 1873, but custom was too strong for law; and until the section could be amended by legislation, a convenient evasion was authorised by the executive.

There can be no doubt that this practice tended to strengthen the independence of the tenants. Of course they were harassed by many demands instead of a single one, but the zamindars were rendered powerless in all matters where united action was required. Thus a tenant who pays rent to more than one person is secure, first, from distraint, and secondly, from ejection for arrears of rent; that is to say, he is secure if he knows the law and is willing to fight; and, as a rule, the tenants in this district are of this character. Besides this, he is practically secure from enhancement, though there are instances of tenants paying an enhanced quota of rent to one co-sharer and the original quota to others.

The inconvenience and difficulty sustained by the Revenue Courts in deciding cases under these circumstances, combined with defective records, may be readily imagined. There is more case-work in this little district than in two ordinary districts under temporary settlement, and I am prepared to assert that each case takes three times as much time and labour. And no doubt individual cases must occur in which oppression is unwittingly caused by the action of courts. But the population as a whole has not suffered. There was no district in the whole of the North-West where the scarcity of 1877-78 was so well borne as it was in this highly-assessed and over-populated district.

I have shown above the average rates of rent for a single tahsil, as ascertained for the new record-of-right. The average rate for the whole district, according to papers prepared in 1875-76, with the object of assessing the patwari cess, was Rs. 4—3 the acre. In some instances it was found on enquiry, after objection to the cess, that the recorded rent was greater than that paid; but with all deductions I do not think the average is less than Rs 4 the acre. In the same papers the highest recorded rent for a tenant-in-chief was Rs. 42 the acre, and the lowest 4 annas 7 pie. The highest recorded rent for under-tenants was Rs. 43-1-0 the acre, and the lowest 1 anna 1 pie. I have stated, however, that enhancement of rent has been almost unknown in the district for years. The collection of rents in kind is not unknown, but the system is restricted, I believe, entirely to lands of which the crop is uncertain. It is the prevailing custom for rice lands on the edge of jheels, the cultivation of which depends on the amount of rainfall. The crop is divided after being cut, and the zamindar takes one-half. The percentage of *chaoli* lands to the cultivated area for three tahsils of which I have the data is 2·27.

Very little indigo manufacture is now carried on in this district, and the factories are mostly in the hands of natives. There are no traditions of oppression from the days when the manufacture was carried on by Europeans.

The alteration in the law regarding patwaris has not been so radical as would seem to have been inferred. There were very few villages in 1875 of which the zamindars continued to pay their own patwaris. The cess was enhanced under the provisions of Act XIX of 1873, but in other respects the existing system was hardly altered. The redistribution of patwaris' circles was delayed until after preparation of the record-of-right, and is now being carried out in Tahsil Machlishahr. No objection to the principle of the cess was raised by the proprietor, although the acreage cess provoked much opposition, and is still regarded with dislike as an encroachment on the permanent settlement. As soon as the record-of-right is prepared, patwaris will be on exactly the same footing and required to perform the same functions as their brother-patwaris in the temporarily-settled districts.

The new record will show all rights connected with land, including the right-of-tenants with rights-of-occupancy. Proprietary rights will be shown in the khewat. Rights-of tenants will be shown in the jamabandi. The latter is a paper which shows in columns the name of the proprietor, the name of the tenant, the number and area of each field, and the rent.

Every field in the map is entered somewhere in the jamabandi All the entries are classified into series. Thus all the entries of *sir* land come first, then all the entries of ex proprietors, then tenants at fixed rates, then tenants with rights-of-occupancy, then tenants-at will, rent-free holders, groves, fallow and uncultivated land

Notes of the value of land are being made for the purpose hereafter of revising the patwari cess, a proportion of which may be made recoverable from tenants at fixed rates But the classification of soils has been forbidden The local rate is the acreage cess which, of course, does not vary with the value of the land

Rents are in no case fixed by the settlement officer He merely records what he finds to be the actual rent payable I am not aware of the existence of any rights of-occupancy in this district which are not protected by the existing law Disputes as to the right of-occupancy *at privileged rates* are, I believe, very likely to crop up, but more in the Ghazipur district than in this, with reference to those mahals which shortly after the settlement were sold up for nominal sums, but in which the former proprietors continued to hold their lands in defiance of the auction-purchaser Whether the second paragraph of section 20, Act XII of 1881, will be found adequate for such cases is, I think, doubtful, since it will be difficult to educe any uniform custom from the very variable data that will be forthcoming

The area held by tenants at fixed rates has always been supposed by me to be about two-thirds of the cultivated area The statement given above shows that considerably more than half the cultivated area paying cash rents is so held in Tahsil Machlishahr.

The practice of subletting and of mortgaging and re mortgaging is very prevalent, but it would be impossible to make any assertion as to custom which might not be refuted It may perhaps be said that where tenants at fixed rates are of high caste, the tendency is for them to sublet their holding, and where they are of low caste, they are more inclined to cultivate themselves, but the facts I have ascertained in this district have cured me of any attempt to generalise except on the one assumption that every man will do the best he can for himself. A man may mortgage his holding and become the sub-tenant in part of it of some one to whom his mortgagee, has transferred the mortgage, while in the meanwhile he has become by inheritance a co sharer in the zamindari right to the extent of one pie in the rupee Hardly any case comes into court in which some complicated dispute of right is not involved, and there are very few cases which do not in one way or other make havoc of conventional and pre conceived opinions The cadastral survey and the formation of a correct record-of rights will, I believe, be the greatest boon which the Government will have conferred on the district since the permanent settlement For there is no doubt, to my mind, that the slovenliness of thought and expression, arising from the inaccurate registration of rights and the growing tendency to regard litigation in the courts as a species of gambling, were seriously affecting the character of the people.

The position of the landlords especially will be vastly improved by the new record. I mean of those landlords who are not fortunate enough to hold in severalty for the present "khewats," that is, the record which declares the rights and liabilities of each co-sharer in a zamindari, are infinitely more untrustworthy than the jamabandis

In another way also the zamindars will benefit by the separation of the class of mere occupancy-tenants from the class of tenants at fixed rates Hitherto the zamindars have not been at the pains of enhancing the rents of the one class any more than the other. Where such rents are capable of enhancement, no doubt applications will now be made

I have not observed any feeling on the part of the proprietors against the inquisitorial character of the present operations or of the duties assigned to patwaris Care was taken at the commencement of the survey to let it be generally known that the Government had no intention of disturbing the permanency of the settlement Of course, the proceedings of the officers engaged in preparing the new record, especially the subordinates, are viewed with some impatience.

Zamindars and tenants are glad to get the party out of their boundaries, but I think all parties admit that the object is a good one.

A return showing the number of suits for enhancement brought since Act XVIII of 1873 came into force is annexed

In conclusion, I would name the following three circumstances as those to which this district owes the comparatively general distribution of prosperity which I think distinguishes it from others —

First comes the favourable climate, including the general regularity of the rainfall

The second is the great variety of interests in the land

The third is the permanency of the Government demand

Number of enhancement cases instituted in the Jaunpur District since Act XVIII of 1873 came into force

1873 74	16
1874-75	18
1875-76	25
1876 77	6
1877 78	12
1878 79	16
1879 80	18
1880.81	88
Total	199

No. 9-A., dated Allahabad, the 10th January 1882.

From—C. ROBERTSON, Esq., *Secretary to Government, N.-W. Provinces and Oudh,*

To—*The Secretary to the Government of India,* REVENUE AND AGRICULTURAL DEPT.

REFERRING to your letter No. 231-R., dated 8th November 1881, I am directed to submit copy of a letter No. $\frac{836}{II-811}$, dated 30th December 1881, from the Secretary to the Board of Revenue, North-Western Provinces, together with copies of the opinions of Messrs. Porter and Irvine on Mr. Tupper's note on the relations of landlord and tenant in Behar, and to say that Mr. Ward's memorandum will follow when received.

2. I am also to forward a copy of Mr. Oldham's paper on tenant-right in Ghazipur referred to in the letter from the Board of Revenue.

No. $\frac{836}{II-811}$, dated Allahabad, the 30th December 1881.

From—F. L. PETRE, Esq., for *Secy. to the Board of Revenue, N.-W Provinces,*

To—*The Secretary to the Government of the North-Western Provinces and Oudh.*

I AM directed now to reply to your No. 1891, dated 22nd November last.

2. Of the officers consulted by Government and whose replies were to be submitted through the Board, Mr. Irvine, the Collector of Ghazipur, alone has up to the date of writing this letter responded to the call; and of the officers consulted by the Senior Member, the reply of one only, Mr. J. S. Porter, the Collector of Shahjahanpur, is of sufficient importance to merit submission to Government. Mr. Carmichael desires me to add that it is much to be regretted that Mr. Ward's reply has not been received, as the former state of the records in the Jaunpur district is specially commented on in Mr. Tupper's note, and Mr. Ward's report would no doubt have been very interesting. It will be forwarded when received. The district is not one with which the Senior Member has had any close official connection, as he has had with the districts of the Benares Division, and any information therefore from those more directly cognizant with the state of affairs there would have been very valuable. Mr. Carmichael proposes, when Mr. Ward's report is received, to forward it first for remarks to Mr. J. Simson, the Commissioner of the Allahabad Division, who has taken the greatest interest and exercised a most earnest supervision over the revision of records now going on in the Jaunpur District.

3. As regards, however, information on the points on which such is sought by Mr. Tupper, there is fortunately nothing remaining to be required. Everything is supplied in a very full and interesting letter submitted by Mr. Irvine as supplemented by a brief memorandum by Mr. Porter, but one which is in every way to the point. The Senior Member commends both these papers to the notice of Government, and would suggest that copies of them *in extenso* be forwarded in reply to the reference.

Mr. Irvine's letter replies categorically to all Mr. Tupper's questions. The Senior Member will also now reply briefly to some of them :—

(*a*) The imposition of the patwaris' cess was carried out without any heart-burnings in the permanently-settled districts of the Benares Division. The only objections preferred were on the score of a village falling into the circle of a patwari who had not had previous charge of it, and here the wishes of the landholders were met by allowing them to make up at their own request the difference of pay necessary to retain their old patwari. There were numerous cases of this kind, and in every one of them the wishes of the people were complied with as far as possible. The measure was carried out when the Senior Member was Commissioner of the Benares Division, and he can therefore affirm with confidence that the measure was not unpalatable to the people.

(*b*) & (*c*) The replies to these questions are in the affirmative, and Mr. Irvine's letter may be referred to.

(*d*) No revision of assessment was ever contemplated, and nothing of the kind here described has, of course, ever been attempted.

(*e*) For reply to this question I am also to refer to the letters enclosed.

4. The old record of 1840 has, as Mr. Irvine shows, been the palladium of the rights of tenants in Ghazipur, and Mr. Porter is, it will be observed, of the same opinion.

The remaining five questions (5 to 9) put by Mr. Tupper are answered so fully by Mr. Irvine, as also in a lesser degree by Mr. Porter, that the Senior Member deems it unnecessary to travel over the same ground. Mr. Irvine's letter in particular, every word of which Mr. Carmichael endorses, leaves nothing to be answered.

As regards the two other permanently-settled districts of the Benares Division, *viz.*, Benares and Mirzapur, there is not in these the same constant warfare between landlord and tenant which has till now obtained in Ghazipur, where tenant-right is so strong, and the late revision of records in the two permanently-settled Parganas of Sikandarpur and Bhadaun, formerly pertaining to the Azamgarh district, but more lately transferred to Ghazipur, has greatly improved in these the relations between landlord and tenant, and Mr. Carmichael feels sure that the completion of the work now in progress in Ghazipur will eventuate in a like beneficial result.

I am to add, in conclusion, that it might be of interest to forward to the Bengal Government copies of Mr Oldham's papers on tenant right in Ghazipur It is not necessary to accept everything that officer has written, still less all the conclusions he has arrived at But the papers will, Mr Carmichael feels sure, be read with interest.

Memo by J S PORTER, Esq, *Collector, Shajahanpur, on* MR TUPPER'S *Note anent the relations of Landlord and Tenant in Behar*

MY experience of the permanently-settled districts in the North-Western Provinces is confined to Ballia our most eastern district I was in charge of the tahsil of that name, then the sub-division of a Ghazipur district, for three years

The condition of the ryots in Ballia appears to contrast favourably with what it is represented to be in Behar They are by no means in a depressed condition Or the contrary, they are well-to-do, extremely strong and independent, and well able to assert and maintain their own rights The only large estate in the tahsil is that of the Raja of Doomraon, whose tenants have been more than able to hold their own

The rents are, as a rule, fixed cash ones, and easy suits for enhancement are rare Half the tenants, I should say, though I have no accurate information on the subject, hold at fixed rates One quarter are ordinary occupancy-tenants and the remainder are tenants-at-will The tenancies at fixed rates are often more valued and valuable than zamindari

Both the tenants at fixed rates and the occupancy-tenants freely mortgage their holdings Sub-letting is very common The new alluvial land on the Ganges is held by tenants-at-will, and commands very high rents The average rent for the whole tahsil may be estimated at about Rs 4 an acre

The tenants have been much assisted in maintaining their position by a survey and record of holdings, which were made and prepared by Mr Raikes about 1840 (if I remember right) In my opinion there can be no complete remedy for the state of things reported from Behar, except a survey and record of all rights and interests in the land

The zamindars in the permanently settled districts of the North-Western Provinces have all along been accustomed to pay their patwaris by a grant of land or otherwise, and made no great objection to the imposition of a patwari cess They complain, indeed, that the patwari has become too much of a Government servant and independent of them, and that they have difficulty in getting their work done, but they do not object to pay for him

Mr Tupper seems to misapprehend the scope and object of the survey now being carried on in some of the eastern districts in these Provinces The valuation of the land for assessment of rates was already an extremely simple business under the rules issued by the Board of Revenue, and it was not for this purpose but for the preparation of a record-of-rights, that the survey was undertaken The survey will make a more accurate valuation possible, but this was not the primary object

Actual rents only are ascertained and recorded If either landlord or tenant wish to vary the rent actually paid, he is referred to a separate application according to law

The survey and record may be expected to improve the relations between landlord and tenant The rights of the tenant will be accurately defined, and the landlord will not try to infringe them, as under present circumstances he is too much inclined to do It cannot injure either party It will tend to remove friction and diminish litigation.

No $\frac{448}{II\ 364}$, dated Ghazipur, the 15th December 1881

From—W IRVINE, Esq, *Officiating Collector of Ghazipur,*

To—*The Secretary to the Board of Revenue, North-Western Provinces*

IN reply to Government order No 1892 of the 22nd November 1881, received direct, I beg to submit the report therein called for on Mr C L Tupper's memorandum of the 20th October 1881, on the proposed Landlord and Tenant Legislation for the Behar Division in the Lower Provinces

2 In the exceedingly short space of time allowed, it is impossible to prepare any elaborate paper upon the subject It has taken the whole of my leisure moments since the receipt of the printed papers to read rapidly through Sir Ashley Eden's letter and its annexures The demand for information has, moreover, come at a most unfortunate time None of the statistics to be obtained from the new settlement record are yet ready for any pargana of the district If this report could be postponed for a twelve-month, I should then be in a position to support my conclusions by detailed figures for the Zamaniah pargana, which adjoins the Buxar subdivision of the Shahabad district

3 I may commence by remarking that the cost of a field survey and record-of-rights is very much under-estimated in paragraph 35 of Mr Tupper's memorandum In the review of the settlement proceedings in parganas Sikandarpur and Bhadaun (Government order No 923 of the 10th June 1881, paragraph 9), it is noted that the cost of the revision of the record exclusive of survey charges, amounted to Rs 202 per square mile. Recently (in my No 317 of 8th September 1881), I estimated for Ghazipur that the cost, including demarcation of boundaries, would be Rs 212, *viz*, demarcation Rs 12 and record-work Rs. 200

per square mile. The Board, in their No. $\frac{355}{1-50}$ of 22nd November 1881, have, however, finally adopted my previous rate of Rs. 225 per square mile. Mr. Tupper's total estimate should be rather £950,000 than £750,000.

4. On the rest of the question I can, at such short notice, do little more than give brief answers to the ten questions put by Mr. Tupper in paragraphs 39 and 40 of his memorandum.

5. The first question is, whether there are any circumstances in the relations between landlords and tenants in Ghazipur, analogous to those in Behar. I find from the printed papers that in the north of the Shahabad district, which is the part adjoining this district, the tenant-right, known under the name of *guzashta*, is particularly strong. In this district also it may be laid down broadly that the tenant-right is very strong. All ancient tenants, certainly all those who are Bhuinhars, Brahmans or Rajputs, maintain their rights intact against all the efforts of the zamindar. In all other points there seems little or no analogy. Here rents in kind (bhaoli) are the exception and not the rule; rents instead of quadrupling in sixteen years, have altered little if at all during the forty years for which a detailed record is in existence; fields are not exchanged at the will of the zamindar; the same land has, as a general rule, continued in the occupation of the same family for at least forty years; the giving of receipts is almost universal; and the system of leasing to middlemen (thikadari) is almost non-existent. In this district we have recorded and admitted rent-rates per bigha, and a tenant, if his rent has really not been changed, has seldom any difficulty in adducing sufficient evidence to prove payment of an unchanged rate for twenty years. The presumption of his having held at fixed rates, which is thereby raised, can rarely or ever be rebutted by the zamindar, as our records do not extend further back than the year 1840.

6. In one point, perhaps, there is a certain analogy. Here, as in Behar, the great effort of the zamindar is to include as much land as possible under the head of *sir* or zamindar's reserved lands (equivalent to the Behar *zirat* lands). In this struggle the tenant is generally the victor. The zamindar rarely succeeds in maintaining any land as *sir* which was not so recorded forty years ago. It is the practice, no doubt, to enter as *sir* in the annual papers all lands from which any tenant has been ejected. But, by a ruling of the Board, such land (if not recorded as *sir* in the settlement record of 1840) becomes ordinary tenant land directly the zamindar ceases to cultivate it and lets it out to any other person. Whenever a contest arises in Court, the spurious claim to class the land as *sir* is rejected, and the occupier obtains his tenant-right, if otherwise entitled to it under the law, despite the entry in the annual papers.

7. The second question relates to the inconvenience arising from the want of an accurate record-of-rights. We have had a record-of-rights for the last forty years, which, though prepared with extreme haste, has been throughout that period the touchstone of all rights. So far as tenant-right is concerned, it is incontrovertible; for there is nothing to produce to contradict it. Both zamindars and tenants appeal to it on all occasions as the ultimate criterion of their rights. With regard to village boundaries, the details of the plan then adopted left an opening for a good deal of vexatious litigation, which is not yet quite extinct. As to proprietary right, the record is not very full, although it was in this direction that the greater number of contests arose during its preparation. On the other hand, the said record, prepared by Messrs. C. Raikes and W. Vynyard in 1840-41, has been the salvation of the tenants' rights, especially of those who claim to hold at fixed rates.

8. The record of 1840 was the first of its kind. It was necessarily imperfect, and it was prepared with somewhat undue haste. Still it has been of unmeasured benefit to all those possessing proprietary or tenant-rights in the soil. But it was constructed under a state of the law quite different from that introduced by Act X of 1859. It does not distinguish between fixed rate and mere occupancy tenants. In fact, as Mr. Raikes records, the resident (*chapparbandi*) tenants, who are styled *maurusi* (hereditary) in his vernacular records, "appear to hold certain lands at certain rates. By universal consent, they cannot be ousted so long as they pay their rent, nor can the proprietor raise his demand. The *pahi-khast* are the surplus population of other villages, and have no peculiar rights." There has thus never been any *quasi*-judicial finding (such as arises by the making of a new settlement record) as to the status under the existing law of the great mass of tenants. All who have held a few years claim, as a matter of course, to be fixed-rate tenants. For the determination of the status of the tenants, for the correction of the proprietary record, for the clear and scientific demarcation of village boundaries, it has long been urged that a revised settlement record should be prepared. From 1840 to 1862 the patwaris, who were then paid by the zamindars, and at their mercy, played havoc with the record. Their annual papers appear not to have been carefully or systematically scrutinised, and numerous errors crept in. From 1862 various attempts have been made to secure an accurate record, and for the last twenty years the subject has been continually under consideration in one shape or other. A cadastral survey began in 1878, and will be completed this year. The formation of an entirely new settlement record began in January 1880, and will possibly be finished towards the end of 1884.

9. As to 3 (*a*), I am not aware of there having been any objection made by the zamindars to the principle of the patwari cess when it was first imposed in the year 1876. Indeed, such objection could not have been entertained, the legal power to impose the cess having been acquired by sections 29, 30 and 31 of Act XIX of 1873. The objections as to details were very numerous both from patwaris and zamindars. With regard to 3 (*b*), the patwaris in this district are exactly on the same footing as those in the temporarily-settled districts of the North-Western Provinces. After the completion of settlement operations, they will, I

presume, perform exactly the same functions here as in temporarily-settled districts of the Province. Even at present the only marked difference in the duties exacted is the non-preparation of an annual field-book or *khasra* as a foundation for the *jamabandi* or rent-roll. To the question asked in paragraph 3 (*c*), I would reply that the present settlement operations extend to the record of the minutest right in land, of which we can in any way trace the existence. It not only extends to tenants with rights-of-occupancy, but to tenants-at-will, sub-tenants (*shikmis*) of all descriptions, and the mortgagees of tenants wherever found. As to paragraph 3 (*d*), my answer is that we are not adopting any method to ascertain rent-rates, whether for assessing local rates or otherwise. The answer to paragraph 3 (*e*) is that we ascertain or discover, so far as we can, the rents previously paid, and those rents are then recorded. We make no attempt to fix rents except on the application of parties. Our record of the rent may, however, give a legal sanction to a rent which formed previously a subject of dispute between the parties. Such disputes are ordinarily brought forward in the shape of an objection to the entry, and they are then disposed of in the same way as any other objection to an entry in the new record.

10. As we fix no rent-rates for any purpose, the case put in paragraph (4) cannot arise.

11. The passage I have quoted in paragraph 8 from Mr. C. Raikes shows that prior to Act X of 1859 the right to hold at fixed rates was supposed to be inherent in the status of every resident ryot. Such a right being outside the written law, has never, to my knowledge, been pleaded, nor, if pleaded, do I think the claim would now meet with any success.

Of rights exercised by tenants outside of what is supposed to be settled law, I may mention the practice of selling and mortgaging occupancy holdings. These practices are very prevalent; and although it is supposed to be settled law that the landlord's consent is requisite, such consent is rarely asked for. In some instances, the landlords actively oppose the exercise of this right. As a rule, however, no opposition is made.

12. The only parganas for which the new record is at all advanced are Zamaniah, Mahaich and Karanda. But at the present stage it is impossible to give any figures even for those parganas. The existing patwaris' papers do not distinguish fixed-rate from other tenants. For the three parganas named above, Mr. Vaughan, Assistant Settlement Officer, assumes that out of the cultivated area occupied by tenants, one-fourth will be found to be held by fixed-rate tenants, one-half by occupancy-tenants, and one-fourth by tenants-at-will.

13. We find that tenants with rights, especially those of high caste, frequently sub-let their lands. Of the whole lands held by tenants with rights in the three parganas named in paragraph 12, it is estimated that *one-eighth* of the area has been sub-let. Tenants with fixed rates are in this district nearly all resident villagers and agriculturists. They usually sub-let a portion only of their holdings and retain a portion in their own hands. They are rarely or never middlemen living entirely on rents received from under-tenants.

14. As we find that the somewhat meagre record drawn up in 1840 has steadied and defined in a remarkable degree all rights in land, we are entitled to presume that a far more accurate and detailed record, brought into accordance with the existing law, will work still further in the same direction. Before 1840 village boundaries and proprietary rights were, as we can easily see from a little study of old correspondence, in a state of complete chaos. By great personal exertions, Mr. C. Raikes obtained a definition of boundaries, a task the magnitude of which, in a district where such disputes were rife, and where there had been no previous demarcation, we can now hardly realise. As was natural, much was left uncertain, and from time to time advantage of this uncertainty has been taken to litigate the matter in the civil court. The accurate adjustment of boundaries recently completed, and their delineation to scale on a scientifically-constructed map will, I feel convinced, render the institution of a civil suit relating to a boundary as rare an event in Ghazipur as it is in an up-country district. Before 1840 such cases were decided at haphazard, and the process of coming to a finding occupied many years. Since 1840 such disputes, though somewhat frequent, are not so inveterate. Unfortunately the settlement officers of 1840 were not able to obtain a skeleton boundary map (*hadbast*) and a field map (*kishtwar*) drawn to any scale. These two maps generally conflict with each other and with the professional map, wherever the boundary line ran through uncultivated land on both sides. From these discrepancies have arisen the suits in the civil court, which have continued more or less up to this day. At present the cadastral maps are drawn to exact scale, and they combine, in one, *hadbast*, *kishtwar* and professional maps Very few disputes can now arise, and those will be capable of very speedy and accurate solution.

15. The classification of tenants introduced in the new record will, we trust, put an end to the greater part of the litigation connected with ejectments. Our record is constructed (at least that is our endeavour) on the basis of all existing records. We hope to so far exhaust all sources of evidence that when our record is once promulgated no litigant will ever succeed in bringing any proof to the contrary against any entry. Thus zamindars will not be tempted as now to try their luck with a notice of ejectment. This is followed by an application to contest. This year, for instance, two Courts of Assistant Collectors of the 1st class were engaged for over four months doing hardly anything else but trying such cases. Since September, some fifty or more petitions for revision have gone up to the Commissioner. After the completion of the new record many of these cases would never have arisen, and those that might arise would have been decided in a great number of instances by a mere reference to the record. A great deal of the time of officials and the money of the parties is thus expended which might have been put to better uses. The taste for litigation is very deeply rooted in this district among high and low; but the less material it has to work upon, the better for

everybody concerned. In a few years, when our new record has stood the brunt of the first assaults which are sure to be directed against it, it will assume the position of authority now occupied by Mr. Raikes' record. The net result will be that a large mass of useless litigation will be put an end to, and the rights of every person interested in the soil will rest on the solid basis of a detailed and valid record.

16. I have never heard any zamindar allege that the preparation of a settlement record or the drawing up of annual papers was an undue inquisition into his private affairs. I doubt if this thought is present even to those who dislike such proceedings. But probably I should be the last person to whom such feelings would find utterance. Some of the large zamindars say in a guarded manner that they think the settlement proceedings useless and uncalled for. But the grounds of this opinion are, I should say, a dislike to have any definite record as tending to diminish their power over their tenants. Interference in village accounts is an old-established and long recognised right of the governing power. No one would think of objecting to such an ancient practice. Zamindars would, I know, like to have the entire control of the appointment, payment and dismissal of patwaris. But such a change would bear very hardly indeed on the tenants. Many zamindars have, as it is, too much influence over the patwari. In 1840 there was, I believe, a certain amount of combined opposition to the survey and settlement. This opposition arose from a belief that the proceedings were a prelude to a revision of the Government demand. When in 1863—66 revision was attempted at the cost of the zamindars, some of the more acute of them put a stop to proceedings by suing Government in the civil court to recover the sums so levied. But, in the proceedings at present in progress, there has been no overt act of opposition, and little or no trouble of any kind. On the contrary, everybody seems eager to represent his case, and to have the record made to suit his own interests.

17. The number of suits for enhancement brought in this district for the last four years is as follows:—

Year.	Number of application.
1877-78	6
1878-79	26
1879-80	18
1880-81	38
Total	88
Average per year	22

No. 54 (Revenue), dated India Office, London, the 17th August 1882.

From—Her Majesty's Secretary of State for India,

To—The Government of India.

No. 6 (Revenue).

I HAVE considered in Council your letter of the 21st March last, transmitting the Report of the Lieutenant-Governor of Bengal upon the proposed amendment of the law of Landlord and Tenant in that Province.

2. This Report is accompanied by opinions of selected officers, representations of public bodies or associations, reports of local investigations, proceedings and recommendations of special commissions, and other documents of much interest and value. It was upon a very careful and exhaustive consideration of these materials that the Lieutenant-Governor arrived at the views which he has embodied in the draft Bill submitted for your approval. With these views you in the main concur. But there are a few minor points, and one of much importance, on which Your Excellency has come to conclusions not altogether in accord with those expressed by the Government of Bengal. Your reasons for these conclusions you have stated at length in the letter under reply. And, with a full exposition of your own views, you now ask for my instructions in regard to the general principles on which legislation shall proceed.

3. Before considering your proposals in detail, I will briefly advert to the questions discussed in paragraphs 4—37 of your letter, namely, your right to legislate in the proposed direction, and the necessity for such legislation.

4. Without entering upon the debated question of what were the precise intentions of the Government of Lord Cornwallis, I consider it fully established that the reservations made at the time of the permanent settlement give you the full right of interposition for the amelioration of the condition of the Bengal peasantry, and that legislative interposition at this time is justified by the facts disclosed—

I.—By the existence of prevalent discontent with some of the provisions of the present law on the part of both zamindars and

ryots, which has caused successive Governments of Bengal and of India for some time past to conclude that an amendment of the law is imperative.

II.—By the fact that Act X of 1859 has failed to ensure to the ryots that security of tenure which it was intended to ensure to them.

III.—By the fact that the Courts have proved unequal to discharge the duty of determining rents thrown upon them by the existing law.

5. Concurring, then, with the view of Your Excellency's Government, and of the Government of Bengal, that an amendment of the present law is necessary, I proceed to communicate to you my opinion on the proposals summarised under thirteen heads in the 108th paragraph of your letter. You will understand that I accede to those proposals which are not noticed.

Mass of the Bengal ryots to be restored to their ancient position.

6. On Head I, I have to observe that, whatever may have been the exact position, actual or legal, of the bulk of the Bengal ryots prior to the permanent settlement, there can be no doubt, after the exhaustive investigation which the question has now undergone, that their customary rights "at least included the right of occupancy conditional on the payment of" the rate of rent current and established in the locality. To this extent, therefore, I concur in your proposal to restore the ryots to their original position.

Paragraph 46.

Occupancy right to attach to all "ryotti" land.

7. Head II relates to one of the most difficult questions in the whole subject, and is that on which your proposals differ most widely both from the views of the Rent Commission and from those expressed in the letter of the Bengal Government.

8. The Rent Commission proposed to maintain the existing rule that 12 years' continuous possession of any land is required to give its holder a right of occupancy in it, but to guard against the failure of that rule in the future, as it has failed in the past, to promote security of tenure, by imposing a penalty on eviction. This proposal, you state, has met with no support. The Lieutenant-Governor, still adhering to the principle that occupancy right shall depend upon the status of the ryot, proposed to confer it on all *resident* ryots, under the provisions of section 19 of his Bill. You have fully considered† this and other schemes, and you have come to the conclusion that it is impossible to apply effectually the principle on which they are based. You, therefore, propose to take a classification of lands instead of the status of the tenant as the basis on which the recognition of the occupancy-right shall be effected, and to attach that right to all "ryotti" lands, as far as the interest in them of all but nomad cultivators and sub-tenants of occupancy ryots is concerned.

† Paragraphs 57—62.

9. After careful consideration of your arguments, I am not satisfied that a measure is advisable which appears to me to make so great and so entirely novel a departure from both the ancient custom and the existing law of Bengal.

10. Your proposal, in the first place, annuls the distinction, deeply rooted in the feelings and customs of the people, not only in Bengal but in most parts of India, between the resident or permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the ryots their original position and rights, appears to me anomalous and undesirable. In the next place, it abandons a principle on which the statute law has been based for nearly a quarter of a century, and which was adopted in 1859 by the Legislature on rational and intelligible grounds. And thirdly, the present papers show that the failure of the law of 1859 has arisen from an error, not in the principle itself, but in the provisions for its application. The provision that accrual of the occupancy-right depends on proof, not of the ryot's having been a cultivator for 12 years, but of his having held the same land continuously for that period, has enabled the landlord to prevent the tenant from acquiring the right, either by shifting his fields within the 12 years, by inducing him to enter into a written contract barring the right, or merely by destroying his evidence

of continuous possession. This error it appears to me may be guarded against without abandoning the principle.

11. I would therefore suggest for your consideration whether, in place of adopting the principle you recommend as the basis of the proposed legislation, it would not be desirable to introduce into the Bill provisions somewhat to the effect that every resident ryot shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident ryot shall be one who, or whose ancestor, has occupied any land in the village or estate for 12 years.

You will observe that the object aimed at is that a ryot shall be deemed to have an occupancy right in all the land which he holds in a village or estate, if he has occupied for 12 years any land whatever in such village or estate. It will be necessary in actual legislation to provide that this right is not forfeited by any sub-division of estates or alteration of village boundaries.

These provisions will, you remark, have practically almost as wide an effect as your own proposals. They will, at the same time, avoid the abandonment of a principle which is, with reason, strongly insisted upon by the zamindars, and to which I attach much importance.

* Paragraph 107.

12. On your proposals under Head III, I have to make one preliminary observation. I understand that the sole object of this part of the Bill is to prevent the undue enhancement of rent, and that you intend the *status quo*, as regards the amount of rent, to be the basis of its operation. Thus, although a landlord may sue for an enhancement,† a ryot cannot sue for a reduction of his existing rent on the sole ground that it exceeds the rent indicated by the table of rates. I approve this principle, but must point out that neither the wording of the Bengal Bill,‡ nor the language of your letter, is quite clear on this point, and that it is desirable that the Bill, as finally drafted, shall leave no room for question about it.

Table of rates to be framed by authority, and enhancement to be limited by it.

† *Vide* your paragraph 70.

‡ *Vide* Section 21 (*d*) read with Section 142 (2) of Bengal Bill. *Vide* also your paragraph 65—"The most important incident of the occupancy tenure is the privilege of paying rent according to the table of rates."

13. On this assumption I approve generally the proposals under this head, subject to the following observations.

14. I concur in your proposals§ that tables of local rates, indicating the maximum rates of rent recoverable in a court of law, shall be framed, and that the principles upon which such tables shall be based shall be laid down by the Board of Revenue under the guidance of the Local Governments, and shall require your sanction. You will not have overlooked that upon the mode in which the table of rates is framed for each locality will depend in great measure the eventual success of the Act; whether it shall prevent or settle, or multiply and embitter, disputes between landlord and tenant. Where existing rents are very low, where, as it appears is the case in some districts, the ryots have succeeded in maintaining, without material enhancement, the rates in force or which were laid down at the time of the Permanent Settlement, a table of rates, abstractedly equitable, might possibly cause the immediate doubling of existing rents and much discontent. On the other hand, in very highly rented districts, it is not desirable that the table shall publicly set up a standard of rates much lower than the rents the ryots are actually paying, and which they will not be able to sue to reduce. For these reasons, I presume that the principle on which the tables will be framed will be to pay much regard to the prevailing rates of the vicinity.

§ Paragraphs 70—72.

15. As I have been unable to accept your general recommendations under Head II, it would be desirable that you should reconsider the views expressed in your 83rd paragraph, with reference to the Lieutenant-Governor's proposal to withhold from *thikadars* the power of enhancement, which seems to have considerable weight of opinion in its support.

16. To the proposals contained in your 82nd paragraph, allowing a complete settlement of any estate on the application of its owner, or of a considerable proportion of its ryots, I assent. Somewhat similar provisions, I observe, were included in Chapter XV of the Bill drafted by the Rent Law Commission. It deserves consideration whether every opportunity should not be taken of making a settlement of wards' and attached estates.

17. Your proposals under Heads VI and VII are briefly, that the occupying ryot shall have the right of selling or mortgaging his holding, and consequently that it shall be saleable for his debts under decree of Court, subject to two restrictions only, that the landlord shall have a right of pre-emption, and that the purchaser shall be of the cultivating class. Upon these proposals I would observe that it is not quite clear what will be the power of the landlord over land which "is placed at his disposal as unoccupied ryotti land." I conclude that he will be able either to transfer the occupancy-right in it to a new tenant, being an agriculturist, or to let it at whatever rent he can obtain, subject to the acquisition of occupancy-right by the tenant, or to cultivate it himself.

Occupancy-rights to be transferable with certain restrictions.

Paragraph 92.

18. As regards Head X, although I must express doubts whether an universal limitation of the amount of rents for all kinds of tenants, resident or otherwise, will be found possible in practice, yet I entirely agree with you that sub-letting, where the custom has not yet become firmly established, should be discouraged, and it may be well that you should carefully consider any other method of attaining that object, which may be suggested in the course of further discussion.

Sub-letting to be discouraged.

19. As regards Head XIII, while fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field survey, I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, have long ago entirely disappeared, even from tradition and remembrance, may prove greater than you anticipate. Your present proposal, however, merely contemplates an experimental commencement of the work in the Patna Division of the Province of Behar, where the need for it is, you think, most pressing, and the conditions least unfavourable; and to this I will make no objection. I shall be glad, however, to receive full reports of the progress of the work, of the expenditure likely to be incurred, of the difficulties which may be encountered, and of the expedients by which they may, in your opinion, be overcome.

Introduction of village records and field surveys.

20. I trust that before proceeding to actual legislation upon this important subject, Your Excellency will maturely consider the probable effect of these measures upon the relations between landlord and tenant in provinces other than Bengal and Behar, in which Bengal Act X of 1859 is the basis of the land law.

21. In conclusion, I cannot refrain from expressing my high appreciation of the ability and earnestness with which Sir A. Eden and the officers who, under him, have been engaged more or less directly upon the work, have treated this very important and difficult subject. I sincerely trust that the result of their and your endeavours will be to settle the land law of Bengal on a firmer, juster, and more satisfactory basis; to keep the cultivation of the soil in the hands of a substantial peasantry able to withstand the vicissitudes of seasons; and to promote the accumulation of wealth, the sound growth of credit, and the progress of agricultural improvement.

No. 16, dated Simla, the 17th October 1882.

From—The Government of India,

To—Her Majesty's Secretary of State for India.

WE have the honour to acknowledge Your Lordship's despatch of 17th August, dealing with the suggestions contained in our letter of 21st March last, for the amendment of the law of Landlord and Tenant in Bengal. We observe with satisfaction that Your Lordship recognises our full right to interpose for the amelioration of the condition of the Bangal peasantry, and also the full justification, which the facts disclosed afford, for legislative interposition; and especially we welcome Your Lordship's acceptance, as the basis of future action, of the fact that the customary right of the bulk of the Bengal ryots at the time of the permanent settlement "at least included the right of occupancy

conditional on the payment of the rate of rent current and established in the locality," and Your Lordship is of opinion that to this extent we should endeavour to restore the ryots to their original position.

2. Your Lordship, however, is not satisfied that our proposal to separate the occupancy right from the status of the occupant (in other words, from conditions of residence and period of past occupancy), and to make it inherent in the land cultivated, is advisable. You characterise it as a "great and entirely novel departure both from the ancient custom and the existing law of Bengal," and consider it inexpedient, (1), because it annuls the distinction between the resident or permanent and the non-resident or temporary cultivator; (2) because it abandons the principle of prescription accruing from twelve years' occupancy, which was adopted in 1859 on what Your Lordship considers were rational and intelligible grounds; and (3), though Your Lordship admits that Act X of 1859 has failed to give to the ryots the security intended, this, it is urged, is not because the principle itself was defective; and you suggest that the object in view can be attained by modifying the incidents of the twelve years' rule, without abandoning the principle.

3. Your Lordship therefore proposes for our consideration a modification of the twelve years' rule, to the effect that every resident ryot shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident ryot shall be one who or whose ancestor has occupied any land in the village or estate (*continuously*, we presume) for twelve years. The effect of the proposal, it is argued, will practically be as wide as that of our proposed plan, while it will avoid the abandonment of a principle which is strongly insisted on by zamindars, and to which Your Lordship attaches much importance.

4. It was not without a very full and anxious consideration of the voluminous discussions on the exact position of the ryot of Bengal at the time of the permanent settlement, nor without careful attention to the numerous alternative proposals, that we came to the conclusion that by attaching the right of occupancy, as a condition inherent (with certain special exceptions) to the cultivation of the land, we were approximating, as nearly as existing circumstances permit, to the object which Your Lordship, no less than the Government of India, desires to attain—*viz.*, the restoration of the ryots of Bengal to their original position, as it was at the time of the permanent settlement. We propose, therefore, in the following paragraphs to explain our reasons for considering that our provision is in reality no great and novel departure from ancient custom, but rather a return to such custom, and then to notice certain considerations which lead us to prefer, as a practical and final measure, our own proposal to the modification of the twelve-years' rule, which Your Lordship submits for our consideration.

5. The distinction which our proposal is supposed to ignore is that which ancient custom drew between *khudkasht* (resident) and *paikasht* (non-resident) ryots. There is no longer any question as to the right of occupancy which pertains to the *khudkahst* ryot. It was one which was quite irrespective of twelve years or any other limit of time. The position of the *paikasht* ryot is open to more dispute, and in provinces where the land was owned by cultivating village communities it is not impossible that their jealousy may have erected barriers to the acquisition of rights by outsiders, and so have maintained a distinction which, if it ever existed in Bengal, whence village communities had for the most part disappeared before the permanent settlement, has long since been obliterated. Apparently at the time of the permanent settlement the *khudkasht* ryot held his land as a matter of status; the *paikasht* ryot held it as a matter of contract. A zamindar might in old times have dispossessed the latter if the land had been required by a *khudkasht* cultivator; but the meaning of this was that the non-resident cultivator took up and relinquished such land at his pleasure; it was not his mainstay, but a margin of additional cultivation, and he usually held it, as is clearly shown, at *lower* rates than the resident cultivators. It was because ryots were scarce that the zamindar was glad to get his surplus land cultivated even on these terms; and it was because the land so cultivated was held at lower rates, and at the option of the non-resident cultivator, that it was justifiable in the landlord to make over his land, if required, to a *khudkasht* cultivator.

6. It is not too much to say that wherever land was permanently cultivated, it was held at customary rates; and so long as those rents were paid, the

cultivator was not ejected. The real underlying condition to be considered was the permanent or temporary nature of the cultivation. The residence or non-residence was an incident, which generally accompanied the permanence or non-permanence of the cultivation, and was more easy to deal with as a test; but the question on which the distinction turned was the cultivator's intention permanently to occupy the land; and it is our contention that this distinction has not been lost sight of in our proposal. As a matter of fact, the class of temporary cultivators is so small that, outside the class of nomad cultivators and of *khoorfa* ryots, it may be said scarcely to exist in Bengal. The balance of proportion between demand and supply has so altered, that the old distinction has vanished, all ryots are now, so far as their landlords permit them to be, permanent cultivators, and to attach the ryotti right to the land generally would, in existing circumstances, be the truest method in our opinion of restoring to the ryots their ancient customary rights in the soil.

7. Nor do we conceive that our proposal differs more widely from the principle of Act X of 1859 than that which Your Lordship has submitted for our consideration. That proposal, equally with our own, ignores all distinction based on residence. It maintains, no doubt, a restriction of twelve years' occupation as a qualification for the accrual of occupancy-rights; but it abandons, equally with our own proposal, what was the essence of the restriction under Act X of 1859, *viz*, the continuous occupancy of the *same* land for a given number of years; and it seems to us that, while our proposal involves a departure from the principles of Act X of 1859, not more wide than that involved in the proposed modification of the twelve-years' rule, it is really more in accord with the customary rights existing at the time of the permanent settlement—rights which were subject to no restriction in point of period of occupation, much less to such a hard-and-fast rule as that which was for the first time imported into the Bengal system in 1859.

8. Turning now to the practical considerations which make us hesitate before accepting the proposed modification of the twelve-years' rule as a preferable scheme to that of finally attaching occupancy rights to the land itself, we have first to consider the proportion of cultivators whom it leaves unprotected. In our despatch of 21st March last, arguing on the basis of the estimate formed by the Behar Committee, we accepted the conclusion that this proportion would be between 30 and 40 per cent. It may be that this calculation is inexact, and it may well be that the circumstances of Behar render it unsafe to apply such a calculation by analogy to the whole of Bengal. The proportion is at best conjectural, and we are not concerned to insist on its accuracy; but the important point to be remembered is that the number of unprotected ryots, whatever it may be at the moment when legislation is completed, will under Your Lordship's scheme, be thereafter a constantly increasing number. Every acre of land which becomes vacant, whether by pre-emption on the part of the landlord, by death without heirs, or by abandonment of the occupant, falls out of the protected class, and instantly becomes a subject for a renewal of the evil contest. The landlords' interest is immediately concerned in preventing the settlement on such land of any existing cultivator of the estate or village, and in defeating, as regards tenants from outside, the accrual of occupancy rights by 12 years' prescription on such land, the old series of litigation, enhancement, and ejectment will recommence, and in the course of another generation the percentage of land thus acquired will be sufficient to render necessary a re-opening of the whole question, and will inevitably involve fresh interference on the part of Government.

9. In the meantime it is abundantly manifest that the position of this unprotected residuum will be infinitely worse than that of unprotected ryots under the existing law. At present the landlord can effectually prevent the accrual of occupancy rights by merely shifting his tenant from one patch of cultivation to another; under the proposed rule it will be incumbent on him to turn the tenant out of the village altogether, out of his house and homestead, as well as out of his land, and we have every reason to believe that this power, which, even as a threat *in terrorem*, would be productive of the worst consequences, would in many cases be actually put in force. The intention to do so has been openly avowed by more than one landholder, and no one who knows how steadily and pertinaciously a portion of the Bengal zamindars have set themselves to work to prevent the growth of occupancy rights, how skilful they

have shown themselves in discovering means of evading the spirit of the law, can doubt that they will, to the utmost of their ability, exercise any power of harassing their tenants which the law may leave them; and fence round the 12-years' rule as we may, any rule which makes it to the interest of the landlord to prevent the growth of prescriptive rights, leaves of necessity to him both the power and the inducement to put such pressure on his ryots as cannot fail to become intolerable.

10. Nor can we leave out of consideration in dealing with this part of the question, the effect of the proposed law on the relations between the zamindars on the one hand, and his occupancy ryots on the other. One effect of the new rule will be that a ryot having cultivated one acre for 11 years, if he acquires 20 acres in the same estate in the twelfth year, will thereupon also acquire a right of occupancy in those additional 20 acres, while an outsider can acquire no such right. The landlord will thus have a direct inducement by every means in his power to prevent a resident occupancy ryot from ever increasing his holding. A second and perhaps worse result of the proposed rule will be that the landlord will have even greater inducement than at present to endeavour in every way possible to sever the occupancy ryot from his land. In bad seasons, should the occupancy ryot fall into arrears, what mercy will be shown him? The small margin of land unhampered with occupancy-rights will inevitably appeal to him with increased urgency to seize every opportunity for evicting the occupancy-tenant, and for planting in his place an unprotected tenant. Thirdly, the old difficulty of provingcontinuity of occupation will remain, and there will always be an inducement for the landholder to endeavour in every way to break that continuity. A fourth objection is that the principle of free sale of occupancy-rights will be found to conflict in practice with the rule that such rights are only acquired by twelve years' occupation, for it will not be easy to maintain the position that by buying the occupancy-right in one acre, a man should thereby at once attain the same right in 20 acres which he has recently undertaken to cultivate, but in which no rights have yet accrued to him. At all events, it will obviously be to the landlord's interest to forestall such an event by preventing any one in the estate from acquiring fresh land.

11. It is not too much to say that, whereas the proposal made in our letter of 21st March introduces by a general rule which leaves no room for evasion and is founded on the ancient customary rights, a final and simple settlement of the question which for the past 25 years has harassed and excited the agricultural population of Bengal, the proposed rule is in no way final; it leaves a certain but necessarily an increasing number of ryots unprotected; it makes it the interest of the zamindar to prevent these ryots from ever acquiring occupancy rights; it leaves him free to adopt measures both to do this, and also to increase the number of this class at the expense of those who have already acquired occupancy rights, and it need hardly be said that any measures which the zamindar may take with this object cannot fail to be harassing to the tenant and detrimental to the agricultural prosperity of the country. So long in fact as the bone of contention which the law of 1859 threw down between the landlord and his tenants remains unremoved, the old feelings of bitterness and antagonism, the old recourse to expensive litigation, possibly the old combinations, and the spirit of agrarian disturbance, will remain, diminished doubtless in area, but not therefore diminished in intensity; for we cannot too often urge that it is the 12-years' rule, wholly alien as it was to the Bengal system, rather than anything else that has been a source of all the most serious mischief in directly arousing and maintaining the spirit of antagonism between landlord and tenant, and we look therefore with serious doubt on the proposal to maintain it even in the modified form proposed in Your Lordship's despatch.

12. There remains then to be considered the argument which Your Lordship deduces from the opposition which our proposal totally to abandon the 12-years' rule is likely to encounter at the hands of the zamindars. If, as is urged, Your Lordship's proposal will have practically almost as wide an effect, as the provision which we desire to adopt, it might be asked why the zamindars should oppose the one more vehemently than the other proposal. We do not conceal from ourselves that either proposal will meet with very serious and painful opposition, and it is with regret that we accept the duty of facing this

opposition; it may also be conceded that of the two propositions, ours will be the more distasteful to the zamindari interest, but the reason why it will be the more distasteful is obvious. It is a simple and final decision, leaving no loophole for escape; it is self-acting and requires no appeal to the Courts, and so counterbalances the advantage which in litigation generally pertains to the longer purse. On the other hand, a modified 12-years' rule leaves the whole question open for fresh litigation. It will always be in the power of a skilful zamindar to diminish the number of his protected ryots and increase that of his unprotected ryots; he will always find means for evading the spirit of the law; in short, it will be open to him to deal with the new law on a smaller scale, exactly as he has dealt with the old one. Unless this reasoning is altogether erroneous, it is obvious that any preference which the zamindars may show for retaining a modified 12-years' rule can be based only on the facilities which such a rule affords for defeating the declared object of Government, and from this point of view their preference, though not unnatural, scarcely commends itself to us as a reason for adopting the provisions which they prefer.

13. There is one other consideration in connection with a modified 12-years' rule which is glanced at in the 20th paragraph of Your Lordship's despatch, but which may properly be noticed in this place before finally closing this part of our reply; and that is, the effect which the adoption of the modified rule in Bengal is likely to have in other provinces in which Act X of 1859 is the basis of the land law.

14. To this question we can only reply that the effect would be in a high degree injurious and inconvenient. If the rule would operate effectually in Bengal, because it would suddenly and without previous notice confer retrospective rights on all persons who had at the time of passing the Bill occupied land for twelve years within the village or estate, it cannot be doubted that in other provinces to which the 12-years' rule applies, landowners would everywhere take alarm, and in order to protect themselves from the effect of a similar enactment, they would be induced, even at the risk of serious loss and inconvenience, to prevent the growth of rights under the condition of the rule; in other words, they would do their utmost to get rid of tenants in the eleventh and twelfth years of their occupation altogether out of their estates, and would probably arrange a regular system of exchanging tenants. It is needless to point out the hardship and oppression inseparable from any such course of action.

15. It would be possible, no doubt, for the Government of India to meet this difficulty, by legislating on the same lines simultaneously for all the provinces to which the principles of a 12-years' rule have been extended, but there are many reasons for deprecating this course. The question of landlord and tenant in temporarily-settled provinces is one of great importance, and is now engaging the attention of the Government of India in communication with the Local Governments. It is more than questionable whether a modified 12-years' rule would be a satisfactory, or even in all cases a possible, method of dealing with it, and we should be most unwilling to hamper ourselves in regard to a matured and careful settlement of the whole question, by placing ourselves under an obligation to legislate summarily on the basis of a modified 12-years rule. The adoption of such a rule for Bengal, then, will have an injurious effect on other provinces if not simultaneously applied to them, and if simultaneously applied, it will materially hamper us in our complete consideration of the general question of landlord and tenant in those provinces.

16. The foregoing paragraphs will satisfy Your Lordship that we have given very full consideration to the suggestion which has been submitted to us, and we are not without hope that Your Lordship may be induced to agree with us in preferring the final and more complete solution of the problem put forward by us, to the proposed modification of a 12-years' rule. Should we unfortunately have failed to convince Your Lordship of the correctness of our views on the question, we shall be prepared to proceed with the Bill on the lines recommended in Your Lordship's Despatch, but to do so will probably involve modifications on some minor points of the Bill. The only one which need be here alluded to is the necessity of combining any modification of the 12-years' rule with a system of compensation for disturbance to unprotected ryots.

17. Turning now to other points mentioned in Your Lordship's Despatch, we have to observe, in regard to paragraph 12, that, although our object is not merely to restrain unreasonable enhancement, but also to facilitate moderate and reasonable enhancement of rents, you have correctly interpreted our intention that the *status quo* should be the basis of the operation of a table of rates, and that a ryot will not be at liberty to sue for a reduction of his rent on the *sole* ground that it exceeds that indicated by the table of rates. This is practically in accordance with the existing law, it having been ruled by the High Court that a ryot having a right of occupancy is not entitled under the existing law to claim abatement of rent on the ground that his rent is higher than the prevailing rate. We have no wish to interfere with the existing law in this respect, the ryot having always his right of relinquishment to fall back upon. Care will be taken to leave no doubts on this point in finally revising the draft of the Bill.

18. We also acquiesce in the conclusion expressed in Your Lordship's 14th paragraph, to the effect that the table of rates will be framed on the principle of paying all possible regard to the prevailing rates of the vicinity.

19. We shall be prepared, should Your Lordship eventually decide on introducing the modified 12-years' rule, to reconsider our rejection of the Lieutenant-Governor's proposal to withdraw from *thikadars* the power of enhancement; but, as at present advised, we are of opinion that if the proposed rule is coupled with a general provision for compensating unprotected ryots for disturbance in case of ejectment, it will perhaps be unnecessary to put a special restriction on the powers of *thikadars* in connection with enhancement.

20. The suggestion made in the 16th paragraph for the settlement of all estates under the management of the Court of Wards and the Revenue officers will be referred to the Government of Bengal. We believe, however, that such settlements are actually carried out whenever the period of management is of sufficient duration to render the operation practicable.

21. In paragraph 17 of the Despatch Your Lordship discusses the question of the effect which the power of pre-emption will have in enabling the landlord to deal with the occupancy-right in land which he may under that power have acquired, and you conclude that he will be able either to transfer the occupancy-right in it to a new tenant, being an agriculturist, or to let it at whatever rent he can obtain subject to the acquirement of the occupancy-right by the tenant, or to cultivate it himself. Under the system which we proposed, whereby the occupancy-right cannot be divorced from the land, this conclusion would be correct, save that the new tenant would at once acquire the occupancy-right in the land, but the problem becomes much more complicated if pre-emption is applied to land when 12 years' occupancy in the estate is a preliminary condition of the acquirement of occupancy-rights. We are here at once in the presence of two conflicting principles. The tenant has the right of free sale, and the purchaser would ordinarily acquire the right of occupancy; but a new tenant put in by the landlord, unless he happens to have been already for 12 years a cultivator on the estate would have no occupancy-right, unless the landlord suffered this to grow up by the prescription of 12 years' continued occupation. Are we then to say that the landlord by pre-emption extinguishes the occupancy-right, and can deal with the land absolutely as if it was his *nij-jote* or *khámár* land? If Your Lordship will refer to paragraph 25 of the Bengal letter of 27th July 1881, it will be seen how much stress the Bengal Government laid upon the opposite principle. They consider it essential that the restrictions which prevent the accrual of occupancy-rights on *khámár* land, should under no circumstances be applied to land on which ryots have once been settled. It is no less expedient that the landlord should not be encouraged to introduce tenants-at-will from outside. The only means of preventing this under the modified 12-years' rule would be to provide that any tenant acquiring a holding, in which occupancy-rights have once accrued, should therewith acquire the occupancy-right thereof. Anything short of this opens wide the door to all the evils which, in a previous portion of the despatch, we have dwelt upon as arising out of the 12-years' rule. Such a system would probably in practice by no means work unreasonably, as might at first sight be anticipated. The right to pre-emption is only allowed as a concession to prevent a hostile or objectionable cultivator being introduced against the zamindar's will,

and is so far a restriction upon the general principle of free sale. The right of occupancy is *ex hypothesi* worth buying, and if the landlord buys it, he is not prevented from selling it. The practical outcome would probably be that a landlord would by pre-emption acquire a right which he could resell to a favoured tenant for probably very little less than he gave for it; in other words, he would buy the right to select his tenant, not the power to destroy the occupancy-right.

22. The only alternative to this proposal that we can see, supposing the right of free sale to be maintained, is to withhold from the landlord altogether the right of pre-emption, and this, though extremely distasteful and indeed unfair to the landlord, would be a less evil than the inducement to bring in from outside a class of tenants-at-will, and to prevent their acquiring occupancy-rights, which is a necessary corollary to allowing the destruction of occupancy-right to follow pre-emption.

23. The whole complication connected with this question seems to us an additional argument for maintaining the simple rule that occupancy-right shall be inherent in the land, and not conditional on any period of continuous occupation.

24. The expression of Your Lordship's wishes conveyed in your 19th paragraph will be transmitted to the Government of Bengal for compliance. We need only remark that, while we are fully sensible of the extreme difficulties of the task, we have reason to believe that the present Lieutenant-Governor of Bengal is himself most anxious to introduce the experiment of establishing a field survey and record of rights in the Patna Division, where undoubtedly the need for it is most pressing, and the difficulties probably less formidable than elsewhere, and we have every hope that, under his judicious guidance, the experiment will be conducted to a successful issue.

25. We have already adverted to the subject of Your Lordship's 20th paragraph, and in conclusion we need only say that we shall have great pleasure in transmitting to the Government of Bengal, for the information of the officers concerned, the favourable notice which Your Lordship has recorded of the ability and earnestness with which this most difficult subject has been dealt with by the officers who, under the instructions of that Government, have been engaged upon it.

Office Memo. No. 216R., dated the 10th February 1883.

From—T. W. HOLDERNESS, ESQ., *Offg. Under-Secy. to the Govt. of India*, REVENUE AND AGRICULTURAL DEPARTMENT,

To—*The Secretary to the Government of India*, LEGISLATIVE DEPARTMENT.

No 1, dated the 11th January 1883.

IN continuation of the office memorandum from this Department, No. 740, dated the 29th December 1882, the undersigned is directed to forward copy of a despatch from Her Majesty's Secretary of State for India, on the subject of the proposed amendment of the Law of Landlord and Tenant in Bengal, and to request that the Legislative Department will be good enough to prepare the Bill which it has been requested to frame with due advertence to the Secretary of State's wishes.

No. 1 (Revenue), dated India Office, London, the 11th January 1883.

From—LORD KIMBERLEY, *H. M.'s Secretary of State for India*,

To—*The Government of India.*

I HAVE considered in Council your Revenue letter No. 16 of 17th October 1882, on the subject of the proposed amendment of the Law of Landlord and Tenant in Bengal.

2. The telegraphic correspondence which has passed since the date of your letter under acknowledgment is transcribed below—

From Secretary of State, to Viceroy, dated 15th January 1882

Bengal Rent Law. Your despatch 17th October. I admit necessity of considerable amendment of law, but adhere to opinion expressed in mine 17th August, that your proposals go beyond necessities of case. But the questions on which I do not agree with you appear to me of such a nature that in a legislative matter requiring much local knowledge, a discretion should be left to your Government as to the form in which a Bill should be introduced. I, therefore, will not refuse sanction to introduction of measure in form you prefer. I anticipate that discussions in Legislative Council will be valuable both for your and my guidance.

From Viceroy, to Secretary of State, dated 22nd December 1882.

Bengal Rent Law. Whilst adhering to our opinion as expressed in our despatches of the 21st March and 17th October last, we must decline to introduce a Bill of which the Secretary of State has expressed disapproval on material point. We shall therefore prepare a Bill in accordance with general views expressed in Lord Hartington's 17th August, and shall introduce it in the Viceroy's Council as soon as it is ready.

From Secretary of State, to Viceroy, dated 30th December 1882.

Yours 22nd, Bengal Rent Law. I approve your decision.

3. As you have thus decided that the legislation, the general principles of which were approved by my predecessor's despatch No. 54 (Revenue) of the 17th August last, shall be framed upon the lines suggested in that despatch, I have only to express my confident hope that the full and careful examination and discussion which the Bill will receive in the Legislative Council will lead to the enactment of a law which will secure the objects stated in the last paragraph of Lord Hartington's despatch. These objects I, in common with the Government of Your Excellency, have much at heart.

Government of India Central Printing Office.—No. 636 L. D.—1-2-83—300.